

# OFFICIAL CODE OF GEORGIA ANNOTATED

## 2014 Supplement

Including Acts of the  
2014 Session of the General Assembly

*Prepared by*  
The Code Revision Commission  
The Office of Legislative Counsel  
*and*  
The Editorial Staff of LexisNexis®



Published Under Authority of the State of Georgia


## Volume 5 2004 Edition

Title 7. Banking and Finance  
Title 8. Buildings and Housing

Including Notes to the Georgia Reports and the  
Georgia Appeals Reports

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ISBN 978-0-327-11074-3 (set)

ISBN 978-0-8205-9224-4

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## THIS SUPPLEMENT CONTAINS

### **Statutes:**

All laws specifically codified by the General Assembly of the State of Georgia through the 2014 Regular Session of the General Assembly.

### **Annotations of Judicial Decisions:**

Case annotations reflecting decisions posted to LexisNexis® through March 21, 2014. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

### **Annotations of Attorney General Opinions:**

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 21, 2014.

### **Other Annotations:**

References to:

Emory Bankruptcy Developments Journal.  
Emory International Law Review.  
Emory Law Journal.  
Georgia Journal of International and Comparative Law.  
Georgia Law Review.  
Georgia State University Law Review.  
John Marshall Law Review.  
Mercer Law Review.  
Georgia State Bar Journal.  
Georgia Journal of Intellectual Property Law.  
American Jurisprudence, Second Edition.  
American Jurisprudence, Pleading and Practice.  
American Jurisprudence, Proof of Facts.  
American Jurisprudence, Trials.  
Corpus Juris Secundum.  
Uniform Laws Annotated.  
American Law Reports, First through Sixth Series.  
American Law Reports, Federal.

### **Tables:**

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2014 Regular Session of the General Assembly.

**Indices:**

A cumulative replacement index to laws codified in the 2014 supplement pamphlets and in the bound volumes of the Code.

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# TITLE 7

## BANKING AND FINANCE

Chap.

1. Financial Institutions, 7-1-1 through 7-1-1021.
4. Interest and Usury, 7-4-1 through 7-4-36.
9. Georgia Merchant Acquirer Limited Purpose Bank, 7-9-1 through 7-9-13.

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**Law reviews.** — For article, “Complex Financial Institutions and Systemic Risk,” see 45 Ga. L. Rev. 779 (2011). For article, “How the Poor Got Cut Out of Banking,” see 62 Emory L. J. 483 (2013).

### RESEARCH REFERENCES

**Am. Jur. Trials.** — Alternative Dispute Resolution for Banks and Other Financial Institutions, 46 Am. Jur. Trials 231.

---

## CHAPTER 1

### FINANCIAL INSTITUTIONS

Article 1		PART 3	
Provisions Applicable to Department of Banking and Finance and Financial Institutions Generally		OPERATIONS OF DEPARTMENT OF BANKING AND FINANCE	
PART 1		Sec.	
PURPOSES AND PRELIMINARY MATTERS		7-1-61.	
Sec.	Definitions.	Rules and regulations.	
7-1-4.		7-1-63.	
7-1-6.	Notices; waivers of notice.	7-1-68.	
PART 2		7-1-71.	
ORGANIZATION AND PERSONNEL OF DEPARTMENT OF BANKING AND FINANCE		7-1-74.	
7-1-35.	Deputy commissioners, examiners, and assistants.	PART 4	
7-1-43.	Disposition of fees collected; payment of expenses from appropriations.	PROCEEDINGS INVOLVING THE DEPARTMENT OF BANKING AND FINANCE	
		7-1-91.	
		7-1-94.	
		Orders by department; enforcement; civil penalty.	
		Evidential value of results of examinations or investigations; editing out of informa-	

Sec.		Sec.	
	tion tending to undermine public confidence in financial institution.		party to depositor; motion to quash disclosure.
7-1-95.	Admissibility of department's certificates and copies [Repealed].		
	PART 5		PART 8
	PERMISSIVE CLOSING DAYS, EMERGENCY CLOSINGS, BUSINESS RESTRICTIONS, AND VOLUNTARY LIQUIDATIONS		INCORPORATION OF BANKS AND TRUST COMPANIES
7-1-113.	Voluntary dissolution prior to commencement of business; failure to properly file articles of dissolution; power of department to seek dissolution.	7-1-396.	Effect of certificate of incorporation; permit to begin business.
	PART 7		PART 9
	RECEIVERSHIP POWERS AND PROCEDURES GENERALLY		FINANCIAL STRUCTURE
7-1-151.	Status of department as receiver; restrictions on appointment.	7-1-415.	Consideration for shares.
	Article 2		PART 10
	Banks and Trust Companies		SHAREHOLDERS
	PART 1	7-1-433.	Closing of transfer books or fixing record date.
	GENERAL MATTERS	7-1-437.	Proxies.
7-1-241.	Restrictions on engaging in banking business.		PART 11
7-1-242.	Restriction on corporate fiduciaries.		DIVIDENDS, DISTRIBUTIONS, AND PREFERRED SHARE ACQUISITION
7-1-243.	Restrictions on banking and trust nomenclature.	7-1-460.	Restrictions on payment of dividends; limitation of actions for dividends or distributions.
	PART 3		PART 12
	POWERS OF BANKS		MANAGEMENT
7-1-285.	Limits on obligations of one person or corporation.	7-1-482.	Number, term, and compensation of directors; effect of failure to maintain at least five directors.
7-1-286.	Real estate loans; acquisition by bank or trust company of ownership interest.		PART 14
7-1-288.	Corporate stock and securities.		MERGER AND CONSOLIDATION OF STATE BANKS AND TRUST COMPANIES
	PART 6	7-1-530.	Authority to merge or consolidate; merger, consolidation, or share exchange across state lines; required provisions of the merger plan.
	DEPOSITS, SAFE-DEPOSIT AGREEMENTS, AND MONEY RECEIVED FOR TRANSMISSION	7-1-531.	Requirements for merger, share exchange, or consolidation plan; modification of plan.
7-1-360.	Third-party claims; notification of disclosure by third	7-1-532.	Execution, contents, and filing of articles of merger, share



Sec.

- exchange, or consolidation; notice; filing amendment.
- 7-1-533. Additional filings with department.
- 7-1-534. Approval or disapproval by department.
- 7-1-535. Procedure after approval by department; federal approval or disapproval; issuance of certificate of merger, share exchange, or consolidation.
- 7-1-536. Effect of merger, share exchange, or consolidation.
- 7-1-537. Rights of dissenting shareholders; surrender of certificates.

## PART 15

CONVERSIONS, MERGERS, AND CONSOLIDATIONS  
INVOLVING NATIONAL BANKS

- 7-1-550. Authority for national bank or federal savings bank to state bank or trust company conversions, mergers, and consolidations; conversion, merger, or consolidation across state lines; conversion of federal savings bank to state bank.
- 7-1-557. Merger, consolidation, or share exchange of nonbank corporations into national banks.

## PART 18

BANK BRANCHES, OFFICES, FACILITIES, AND  
HOLDING COMPANIES

- 7-1-601. Branch offices.
- 7-1-606. Bank holding companies — Actions unlawful without prior approval of commissioner; exceptions.
- 7-1-608. Bank holding companies — Lawful and unlawful acquisitions, formations, and mergers.

## Article 3

## Credit Unions

## PART 1

## GENERAL PROVISIONS; ORGANIZATION

- 7-1-630. Initial subscribers; contents

Sec.

- and filing of articles; other required filings; fee for investigation; selection of initial directors.
- 7-1-631. Additional filings with department [Repealed].
- 7-1-632. Approval or disapproval by department; certificate of incorporation.
- 7-1-634. Amendment of articles and bylaws; fee for investigation; approval or denial by department.
- 7-1-635. Procedures for department.
- 7-1-635.1. Out-of-state credit unions.

## PART 2

## OPERATION AND REGULATION

- 7-1-650. Powers.
- 7-1-651. Membership; shares.
- 7-1-653. Expulsions and withdrawals; disposition of deposits, interest, shares, or dividends; reinstatement.
- 7-1-655. Boards of directors; credit and supervisory committees; officers; oaths of officials; removal from office.
- 7-1-656. Duties of directors; meetings; applicability of Code Section 7-1-490.
- 7-1-660. Dividends; interest.
- 7-1-663. Rules and regulations of department.
- 7-1-665. Subsidiary offices.
- 7-1-667. Mergers.
- 7-1-668. Conversion of state and federal credit unions.
- 7-1-669. Central credit union.
- 7-1-670. Third-party payment services.

## Article 4

## Sale of Payment Instruments

- 7-1-680. Definitions.
- 7-1-681. Licensing requirements; engagement in sale of payment instruments or money transmission defined; liabilities.
- 7-1-682. Exemption from licensing requirements.
- 7-1-683. Requirements for licensure; fees; rules and regulations.

Sec.		Sec.	
7-1-683.1.	Locations for conduct of business; contracting with authorized agent; requirements of agent.	7-1-697.	No limitation on common law liability or state prosecution.
7-1-683.2.	Bonding.	7-1-698.	Continuing effectiveness of existing licenses.
7-1-683.3.	Authority of department.	<b>Article 4A</b>	
7-1-684.	Investigation of applicants for licensure; background checks on employees and others.	<b>Cashing of Payment Instruments</b>	
7-1-684.1.	Reporting to Nation-wide Multistate Licensing System and Registry.	7-1-700.	Definitions.
7-1-684.2.	Use of unique identifier of licensee.	7-1-701.	Licensing for cash payment instruments.
7-1-685.	Expiration and renewal of licenses.	7-1-701.1.	Exemption from licensing requirements.
7-1-686.	Display of license; license nontransferable and nonassignable; notification of additional locations.	7-1-702.	Requirements for licensure.
7-1-687.	Notice of action against licensee by creditor or claimant; other notification requirements.	7-1-702.1.	Operation of mobile payment instrument cashing facility.
7-1-688.	Approval required of new ultimate equitable owner, other change of control, or executive officer of licensee; denial of application.	7-1-702.2.	Authority of department.
7-1-689.	Record keeping; investigations and examinations by department; subpoenas; confidentiality; limitations on civil liability.	7-1-703.	Investigation of applicants; background checks of employees.
7-1-690.	Enforcement.	7-1-703.1.	Reporting on condition to Nation-wide Multistate Licensing System and Registry.
7-1-691.	Prohibited activities while engaged in sale of checks or money transmission.	7-1-703.2.	Use of unique identifier of licensee.
7-1-692.	Suspension or revocation of license; failure to issue license; grounds; administrative review.	7-1-704.	Renewal of licenses.
7-1-693.	Applicant or licensee as borrower in default; failure to pay child support prohibits licensure.	7-1-704.1.	Posting of license; license is nontransferable and nonassignable; notification of new facilities.
7-1-694.	Cease and desist orders from unauthorized activities; civil penalties for violations; judicial review; administrative fines.	7-1-705.	Written notice of claims against licensee, judgments, or other misconduct by employees, directors, or others.
7-1-695.	Liability for payment.	7-1-705.1.	Approval required for change of control or ultimate equitable owner; additional requirements; denial and notification of reasons.
7-1-696.	Penalties for violations.	7-1-706.	Record keeping obligations; investigations and examinations by the department; examination fees; administration of oaths and issuing of subpoenas; confidentiality; civil liability.
		7-1-706.1.	Regulatory interpretation and enforcement.
		7-1-707.	Required endorsement by licensee; immediate payments; deferment of payment; identification requirements; acceptable fee for services.
		7-1-707.1.	Posting of fees for cashing payment instruments.



- Sec.  
7-1-708. Grounds for suspension or revocation of license; employment of individuals subject to cease and desist order; administrative review.
- 7-1-708.1. Denial or suspension of license for student borrowers in default or for failing to comply with child support requirements.
- 7-1-708.2. Issuance of cease and desist orders; administrative and judicial enforcement; penalty for noncompliance.
- 7-1-709. Penalty for violation of article.
- 7-1-709.1. No limitation on common law liability or state prosecution.
- 7-1-709.2. Continuing effectiveness of existing licenses.

**Article 8**

**Multiple-Party Accounts**

- 7-1-810. Definitions.

**Article 13**

**Licensing of Mortgage Lenders and Mortgage Brokers**

- 7-1-1000. Definitions.
- 7-1-1001. Exemption for certain persons and entities; registration requirements.
- 7-1-1001.1. Requirement for mortgage loan originator license; application to sellers of mobile homes.
- 7-1-1002. Transaction of business without a license, registration, or exemption prohibited; knowing purchase of mortgage loan from unlicensed or nonexempt broker or lender prohibited; liability of persons controlling violators.
- 7-1-1003. Applications for licenses.
- 7-1-1003.1. Physical place of business.
- 7-1-1003.2. Financial requirements for licensing and registration; bond requirements.
- 7-1-1003.4. Notification statement [Repealed].
- 7-1-1003.5. Nationwide Mortgage Licensing System and Registry.

- Sec.  
7-1-1003.6. Privileged or confidential nature of information; exception.
- 7-1-1003.7. Approval of mortgage industry related courses; application; renewal applications; audits.
- 7-1-1004. Investigation of applicant and its officers; audit; education, experience, and other requirements relative to licensees and registrants.
- 7-1-1004.1. Reports of condition.
- 7-1-1004.2. Licensees' ability to challenge information.
- 7-1-1004.3. Visibility requirement for unique identifier of individuals originating residential mortgage loan.
- 7-1-1005. Renewal of licenses and registrations; expiration.
- 7-1-1006. Contents of license; posting of license; transferring of license; transacting business under other name; change of address; opening a new additional office without prior approval; approval of branch manager.
- 7-1-1007. Licensee to give notice of certain actions brought against it by a creditor or borrower; notice to the department of cancellation of bond.
- 7-1-1008. Acquisition of 10 percent or more of the voting shares or of the ownership of any other entity licensed or registered to conduct business under this article.
- 7-1-1009. Maintenance of books, accounts, and records; investigation and examination of licensees and registrants by department; confidentiality; exemptions from civil liability.
- 7-1-1010. Annual financial statements.
- 7-1-1011. Annual fees.
- 7-1-1013. Prohibition of certain acts.
- 7-1-1015. Rules relative to escrow accounts.
- 7-1-1016. Regulations relative to advertising.

Sec.	Sec.
7-1-1017. Suspension or revocation of licenses, registrations, or mortgage broker education approval; notice; judicial review; effect on preexisting contract.	7-1-1018. Cease and desist orders; enforcement procedure; civil penalty; fines.
	7-1-1020. Construction.

**Law reviews.** — For survey article on cases in the areas of corporate, securities, partnership, and banking law for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 55 (2003).

RESEARCH REFERENCES

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- Bank's Failure to Use Ordinary Care in Detecting Forged or Altered Checks, 13 POF2d 347.
- Commercial Paper — Negligence Contributing to Alteration or Unauthorized Signature Under UCC § 3-406, 14 POF2d 693.
- Circumstances Rebutting Presumption of Payment of Savings Account, 18 POF2d 187.
- Bank's Liability for Payment of Check or Withdrawal on Less than Required Number of Signatures, 25 POF2d 165.
- Liability of Bank for Criminal Attack at ATM or Night Depository, 4 POF3d 497.
- Banking Negligence — Improper Dishonor of Letter of Credit, 17 POF3d 541.
- Am. Jur. Trials.** — Bank Liability for Negligence in Lending and Breach of Loan Agreement, 69 Am. Jur. Trials 119.

ARTICLE 1

PROVISIONS APPLICABLE TO DEPARTMENT OF BANKING AND FINANCE AND FINANCIAL INSTITUTIONS GENERALLY

PART 1

PURPOSES AND PRELIMINARY MATTERS

7-1-4. Definitions.

Subject to additional definitions contained in the subsequent provisions of this chapter, as used in this chapter, the term:

- (1) "Affiliate" means any corporation, business trust, association, or other similar organization:
- (A) Of which a financial institution, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 percent of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election or controls in any manner the election of a

majority of its directors, trustees, or other persons exercising similar functions;

(B) Of which control is held, directly or indirectly, through stock ownership or in any other manner by the shareholders of a financial institution who own or control either a majority of the shares of such financial institution or more than 50 percent of the number of shares voted for the election of directors of such financial institution at the preceding election or by trustees for the benefit of the shareholders of any such financial institutions;

(C) Of which a majority of its directors, trustees, or other persons exercising similar functions are directors of any one financial institution; or

(D) Which owns or controls, directly or indirectly, either a majority of the shares of a financial institution or more than 50 percent of the number of shares of a financial institution voted for the election of directors of a financial institution at the preceding election or controls in any manner the election of a majority of the directors of a financial institution or for the benefit of whose shareholders or members all or substantially all the capital stock of a financial institution is held by trustees.

(1.5) “Agency relationship” is a relationship created by a contractual agreement whereby a financial institution agrees with a third party, including another financial institution, to act in a principal or agent capacity to facilitate the conduct of activities related to the business of banking, which activities are currently authorized under this chapter or under other applicable law.

(2) “Agreement for the payment of money” means a consensual monetary obligation not in the form of an evidence of indebtedness or an investment security and includes an account or general intangible as defined in Code Section 11-9-102.

(3) “Appropriated retained earnings” means that portion of the retained earnings of a bank or trust company set aside by resolution of the board of directors as unavailable for the payment of dividends or other distribution to shareholders.

(4) “Articles” means original or restated articles of incorporation or articles of consolidation and all the amendments thereto, including articles of merger or conversion, and also includes what heretofore have been designated by law as certificates of incorporation or charters and, in case of foreign corporations, whatever documents are equivalent to “articles” in their jurisdiction of incorporation. After an amendment restating articles in their entirety, the “articles” shall not include any prior documents, and the certificate of amendment issued by the Secretary of State shall so state.



(5) “Assets” means all the property and rights of every kind of a financial institution.

(6) “Attorney” means an attorney at law who is regularly retained as counsel for a financial institution or who is a partner or associate of a firm which is regularly retained as counsel for a financial institution.

(7) “Bank” means a corporation existing under the laws of this state on April 1, 1975, or organized under this chapter and authorized to engage in the business of receiving deposits withdrawable on demand or deposits withdrawable after stated notice or lapse of time; “bank” shall also include national banks located in this state for the purpose of Part 6 of Article 2 of this chapter, relating to deposits, safe-deposit agreements, and money received for transmission, and Article 8 of this chapter, relating to multiple deposit accounts; provided, however, that “bank” shall not include a credit union, a building and loan association, a savings and loan association, or a licensee under Article 4 of this chapter. “Bank” shall include a federal or state credit union for the purposes of Part 6 of Article 2 of this chapter, provided that this inclusion is not intended to grant or expand any powers to credit unions not authorized in Part 6 of Article 2 of this chapter or by other law.

(8) “Building and loan association” means such an association as defined in paragraph (1) of subsection (a) and subsections (b) and (c) of Code Section 7-1-770.

(9) “Capital debt” means the sum of the face value of the subordinated securities of a financial institution issued pursuant to Code Section 7-1-419.

(10) “Capital stock” means the sum of the par value of the authorized shares which have been issued and remain outstanding of a bank or trust company.

(11) Reserved.

(12) “Commercial bank” means a bank authorized to hold deposits subject to check.

(13) “Commissioner” means the commissioner of banking and finance.

(14) “Corporation” means a corporation, whether profit or non-profit, and includes a professional corporation or joint-stock association, organized under the laws of this state, the United States, or any other state, territory, or dependency of the United States or under the laws of a foreign country.

(15) “Credit union” means a cooperative society incorporated under the laws of this state on April 1, 1975, or organized under Article

3 of this chapter and existing for the twofold purpose of promoting thrift among its members and creating a source of credit for them at reasonable rates.

(16) "Department" means the Department of Banking and Finance.

(17) "Depositor" means any person or corporation who shall deposit money or items for the payment of money in any financial institution, which funds are subsequently (allowing time for collections) withdrawable either on demand or after a stated notice or lapse of time, whether interest is allowed thereon or not, and shall also include:

(A) Holders of demand and time certificates of deposit;

(B) Owners of certified or cashiers' checks and checks purchased from a licensee under Article 4 of this chapter; and

(C) Shareholders in credit unions, federal credit unions, building and loan associations, and savings and loan associations to the extent that funds paid in by them are withdrawable within the terms of this definition.

(18) "Evidence of indebtedness" means a note, draft, or similar negotiable or nonnegotiable instrument.

(19) "Federal credit union" means an association organized pursuant to the Federal Credit Union Act, 12 U.S.C. Sections 1750-1751i.

(20) "Fiduciary" means an executor, administrator, guardian, receiver, trustee, assignee for benefit of creditors, or one acting in a similar capacity.

(21) "Financial institution" means:

(A) A bank;

(B) A trust company;

(C) A building and loan association;

(D) A credit union;

(E) A corporation licensed to engage in the business of selling checks in this state on April 1, 1975, or so licensed pursuant to Article 4 of this chapter;

(F) Business development corporations existing on April 1, 1975, pursuant to the former "Georgia Business Development Corporation Act of 1972," approved April 3, 1972 (Ga. L. 1972, p. 798), or organized pursuant to Article 6 of this chapter;

(G) An international bank agency doing business in this state on April 1, 1975, pursuant to the former “International Bank Agency Act,” approved April 6, 1972 (Ga. L. 1972, p. 1140), or authorized to do business in this state pursuant to Article 5 of this chapter;

(H) In addition, as the context requires, a national bank, savings and loan association, or federal credit union for the purpose of the following provisions:

(i) Code Section 7-1-2, relating to findings of the General Assembly;

(ii) Code Section 7-1-3, relating to objectives of this chapter;

(iii) Code Section 7-1-8, relating to supplementary principles of law;

(iv) Code Section 7-1-37, relating to restrictions on officials and personnel;

(v) Code Section 7-1-70, relating to disclosure of information;

(vi) Code Section 7-1-90, relating to judicial review of department action;

(vii) Subsection (d) of Code Section 7-1-91, relating to orders to desist from conduct illegal under the laws and regulations of this state;

(viii) Code Section 7-1-94, relating to the evidentiary results of examinations and investigations;

(ix) Code Sections 7-1-111 and 7-1-112, relating to emergency closings;

(x) Code Sections 7-1-110 and 7-1-294, relating to permissive closings;

(xi) Code Section 7-1-133, relating to prohibited advertising;

(xii) Paragraph (11) of Code Section 7-1-261, relating to additional operational powers of banks and trust companies;

(xiii) Paragraph (3) of subsection (a) of Code Section 7-1-394, relating to criteria to be considered in approving new banks;

(xiv) Code Section 7-1-658, relating to loans;

(xv) Code Section 7-1-840, relating to criminal prosecutions; and

(xvi) Code Section 7-1-841, relating to application of Title 16 provisions;



(I) For the purposes of Code Section 7-1-61, “financial institution” shall also include a bank holding company as defined in Code Section 7-1-605;

(J) For the purposes of paragraph (10) of Code Section 7-1-261, relating to agency relationships, “financial institution” shall include banks chartered by states other than Georgia; and

(K) For the purposes of Part 6 of Article 2 of this chapter, relating to deposits, safe deposit agreements, and money received for transmission, and Article 8 of this chapter, relating to multiple party deposit accounts, “financial institution” shall also include federal credit unions.

(22) “Insolvency” means:

(A) Inability to meet liabilities as they become due in the regular course of business; or

(B) Insufficiency in actual cash market value of assets to pay liabilities to depositors and other creditors.

(22.5) “Main office” means the principal banking location of a bank as such location appears in the records of the Department of Banking and Finance. If a bank does not designate a main office, the department shall choose a banking location of the bank to be the main office.

(23) “National bank” means a national banking association organized pursuant to 12 U.S.C. Section 21-215b.

(24) “Net assets” means the amount by which the total assets exceed the total debts of a financial institution. Total assets shall include but not be limited to both tangible and intangible assets, including prepaid expenses, prepaid taxes, and accrued income using book values determined in accordance with generally accepted accounting principles applicable to financial institutions. Total assets shall not include intangible assets in the form of good will, core deposit intangibles, or other intangible assets related to the purchase, acquisition, or merger of a bank charter. Total debts shall include all liabilities, other than contingent liabilities, including accrued expenses, deferred or unearned income, and valuation reserves, all determined in accordance with generally accepted accounting principles applicable to financial institutions.

(25) “Paid-in capital” means the sum of the considerations received in the sale or exchange of shares of a bank or trust company in excess of the amount of the capital stock and the expense fund required by Code Section 7-1-396 and includes the surplus, if any, created by or arising out of a reduction of the capital stock of such financial institution effected in a manner permitted by law, any amounts

properly regarded as surplus of such financial institution on April 1, 1975, and any amounts transferred from the expense fund as permitted by Code Section 7-1-412.

(26) “Person” means an individual, trust, general or limited partnership, unincorporated association (except a joint-stock association), or any other form of unincorporated enterprise.

(27) “Principal court” means the superior court of the county where the registered office of a financial institution is located or, in the case of a proposed financial institution, will initially be located, as shown in its articles or application for authority to commence business. Whenever under this chapter the principal court is authorized to take any action but lacks, because of constitutional restrictions, jurisdiction or venue over the person or corporation against which such action is to be taken or over the subject matter which is to be affected by its action, then such action may be taken by the superior court of this state in which jurisdiction and venue are proper or, in the absence of any such court, by a court of another state, a federal court, or a court of a foreign country in which jurisdiction and venue are proper.

(28) “Public body” means an agency, authority, board, commission, instrumentality, or similar entity which is part of or connected with the government or political subdivision referred to in the context.

(29) “Public sale” means a sale as defined in paragraph (31.1) of Code Section 11-1-201.

(29.5) “Registered agent” means the person or corporation on whom service of process is to be made in a proceeding against a bank. Written notice of any change in the identity or address of a bank’s registered agent must be delivered to the Department of Banking and Finance in addition to and at the same time as such notice is filed with the Secretary of State. The provisions of Part 1 of Article 5 of Chapter 2 of Title 14 shall apply to any such registered agent.

(30) “Registered office” means the location of the registered agent and may be a banking location.

(30.5) “Retained earnings” means the balance of the net profits, income, gains, and losses from the date of incorporation or from the latest date when a deficit was last eliminated of a financial institution whose articles were granted by the Secretary of State and excludes subsequent distributions to shareholders and transfers to appropriated retained earnings. Retained earnings shall also include any portion of paid-in capital or appropriated retained earnings or, in the case of other organizations, equivalent funds, allocated to retained earnings in mergers, consolidations, or acquisitions of all or substan-

tially all of the property or assets of another such financial institution or other organization permitted by law.

(31) "Savings and loan association" means an association created pursuant to the Home Owners' Loan Act of 1933, 12 U.S.C. Sections 1461-1468, including a federal savings bank.

(32) "Savings bank" means a state chartered bank that has powers no greater than a state bank as provided in this chapter but that may lend and invest in commercial loans in an aggregate amount that does not exceed 50 percent of its total assets. Such bank may elect, subject to department approval, or the department may require, that the savings bank comply with selected provisions of the Home Owners' Loan Act of 1933 that in the judgment and discretion of the department would be consistent with the charter and purpose of the bank. For the purposes of this paragraph, the term "commercial loan" means a loan for business, commercial, corporate, or agricultural purposes.

(33) "Shareholder" means the owner of shares in a financial institution.

(34) "Shares" means the units into which the proprietary interest of the institution is divided.

(34.1) "State savings and loan association" means a bank which pays interest on substantially all of its depositors' funds and the majority of whose loans are secured by first liens on or other security interest in residential real property or upon the security of its deposits.

(35) "Statutory capital base" means the sum of the capital stock, paid-in capital, appropriated retained earnings, and capital debt of a bank or trust company less any amount of good will, core deposit intangibles, or other intangible assets related to the purchase, acquisition, or merger of a bank charter or accumulated deficit (negative retained earnings).

(36) "Subject to check" includes withdrawal or transfer by negotiable or transferable order or authorization even though such order or authorization does not constitute a check under Code Section 11-3-104.

(37) "Subsidiary" means a corporation controlled by a financial institution which owns at least a majority of its voting shares.

(38) "Third-party payment service" means any system employing checks, drafts, computer transmissions, or other techniques by which a depositor may effect payment to third parties.

(39) "Treasury shares" means shares of a financial institution which have been issued, have been subsequently acquired by, and



belong to the financial institution otherwise than in a fiduciary capacity and have not been canceled. Such shares shall be deemed to be “issued” but not “outstanding” shares.

(40) “Trust company” means a corporation existing under the laws of this state on April 1, 1975, or organized under this chapter and authorized by law to engage in the business of acting as a fiduciary. (Code 1933, § 41A-102, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 1; Ga. L. 1977, p. 730, § 1; Ga. L. 1980, p. 972, § 1; Ga. L. 1981, p. 1566, § 1; Ga. L. 1982, p. 3, § 7; Ga. L. 1982, p. 2496, §§ 1, 2; Ga. L. 1983, p. 493, § 2; Ga. L. 1984, p. 949, § 1; Ga. L. 1985, p. 258, § 1; Ga. L. 1986, p. 458, § 1; Ga. L. 1991, p. 94, § 7; Ga. L. 1995, p. 673, §§ 1, 2; Ga. L. 1996, p. 6, § 7; Ga. L. 1998, p. 795, §§ 1, 2; Ga. L. 2000, p. 174, § 1; Ga. L. 2001, p. 362, § 24; Ga. L. 2001, p. 970, § 1; Ga. L. 2005, p. 826, § 1/SB 82; Ga. L. 2006, p. 72, § 7/SB 465; Ga. L. 2007, p. 502, § 1/SB 70; Ga. L. 2009, p. 86, § 1/HB 141; Ga. L. 2011, p. 518, § 1/HB 239; Ga. L. 2012, p. 775, § 7/HB 942.)

**The 2005 amendment**, effective May 5, 2005, added paragraph (31.1) and substituted “State savings” for “‘Savings bank’ or ‘state savings’” at the beginning of paragraph (32).

**The 2006 amendment**, effective April 14, 2006, part of an Act to revise, modernize, and correct the Code, redesignated former paragraph (31.1) as paragraph (32) and redesignated former paragraph (32) as paragraph (34.1).

**The 2007 amendment**, effective July 1, 2007, inserted “less any amount of good will, core deposit intangibles, or other intangible assets related to the purchase, acquisition, or merger of a bank charter” at the end of subparagraph (35)(A).

**The 2009 amendment**, effective July 1, 2009, in paragraph (24), deleted “(except good will)” following “intangible assets” in the second sentence and added the third sentence.

**The 2011 amendment**, effective July 1, 2011, in paragraph (35), deleted the colon at the end of the introductory paragraph, substituted the present provisions for the former provisions of subparagraph (35)(A), which read: “The sum of the capital stock, the paid-in capital, the appropriated retained earnings, and the capital debt of a bank or trust company less any amount of good will, core deposit intangibles, or other intangible assets related to the purchase, acquisition, or merger of a bank charter; or”; and deleted former subparagraph (35)(B), which read: “The amount of the net assets of such financial institution, whichever is the lower amount.”

**The 2012 amendment**, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (35).

## JUDICIAL DECISIONS

**Corporation did not meet definition of person.** — Corporation was not an eligible “payable on death” (POD) beneficiary on certificates of deposit or a trust account because under O.C.G.A. § 7-1-810(11), a POD payee on a death account had to have been a person, and under § 7-1-810(2), a beneficiary on a

trust account had to have been a person; under O.C.G.A. § 7-1-4(26), a “person” was defined as an individual, trust, general or limited partnership, unincorporated association (except a joint-stock association), or any other form of unincorporated enterprise. Thus, the corporation did not meet the statutory defi-

dition of person. *Tuvim v. United Jewish Cmtys., Inc.*, 285 Ga. 632, 680 S.E.2d 827 (2009).

### 7-1-6. Notices; waivers of notice.

Except as otherwise expressly provided:

(1) Any notice required to be given under this chapter may be delivered in person by first-class mail, or by telegram, charges prepaid, to the last known address of the person or corporation or to the registered office of the corporation. If the notice is sent by mail or by telegraph, it shall be deemed to have been given when deposited in the United States mail or with a telegraph office. If such notice is of a meeting, it shall specify the place, day, and hour of the meeting. Notice of a meeting of shareholders shall be given not less than ten nor more than 60 days before the meeting. Notice of a special meeting shall specify the general nature of the business to be transacted;

(2) Any written notice required to be given under this chapter need not be given if there is a waiver thereof in writing signed by the person or on behalf of the corporation entitled to such notice or by their proxy, whether before or after the time when the notice would otherwise be required to be given, provided that no such waiver shall apply by its terms to more than one required notice;

(3) Attendance of a person, either in person or by proxy, at any meeting shall constitute a waiver of notice of such meeting, except where a person attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting was not lawfully called or convened; and

(4) If the language of a proposed resolution or a proposed plan requiring approval by shareholders is included in a written notice of a meeting of shareholders, the shareholders' meeting considering the resolution or plan may adopt it with such clarifying or other amendments as do not enlarge its original purpose without further notice to shareholders not present in person or by proxy. (Code 1933, § 41A-107, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2005, p. 826, § 2/SB 82; Ga. L. 2006, p. 72, § 7/SB 465.)

**The 2005 amendment**, effective May 5, 2005, substituted "60 days" for "50 days" in the fourth sentence in paragraph (1).

**The 2006 amendment**, effective April

14, 2006, part of an Act to revise, modernize, and correct the Code, substituted semicolons for periods at the end of paragraphs (1) and (2) and substituted "; and" for a period at the end of paragraph (3).

## PART 2

## ORGANIZATION AND PERSONNEL OF DEPARTMENT OF BANKING AND FINANCE

**7-1-35. Deputy commissioners, examiners, and assistants.**

(a) The commissioner shall appoint from time to time, with the right to discharge at will, a senior deputy commissioner of banking and finance. The commissioner may appoint additional deputy commissioners as needed. All deputy commissioners shall also be ex officio examiners. The commissioner may appoint such additional examiners and assistants as he or she may need to discharge in a proper manner the duties imposed upon the commissioner by law, subject to any applicable state laws or rules or regulations and within the limitations of the appropriation to the department as prescribed in this chapter. Hiring, promotion, and other personnel policies of the department shall be consistent with guidelines or directives of the state, shall be in writing, and shall be made available upon request to employees of the department.

(b) Within the limitations of its annual appropriation, the department may expend funds pursuant to the authority granted under Article VIII, Section VII, Paragraph I of the 1983 Constitution of Georgia necessary to the recruitment, training, and certification of a professional staff of financial examiners. The department may provide for the participation of examiners in such educational, training, and certification programs as the commissioner deems necessary to the continued qualification and recognition of the professional status of examiners. The department may recognize independent certification of professional qualifications as supplemental to the rules and regulations of the State Personnel Board in considering the personnel actions relative to its examiners. (Ga. L. 1919, p. 135, art. 2, §§ 10, 12; Ga. L. 1920, p. 102, § 1; Ga. L. 1922, p. 63, § 1; Code 1933, §§ 13-310, 13-312; Ga. L. 1943, p. 257, § 1; Ga. L. 1945, p. 403, § 1; Ga. L. 1947, p. 673, § 1a; Ga. L. 1949, p. 526, § 1; Ga. L. 1965, p. 540, § 3; Code 1933, § 41A-205, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1986, p. 458, § 2; Ga. L. 1989, p. 1211, § 2; Ga. L. 1996, p. 848, § 1; Ga. L. 1997, p. 485, § 3; Ga. L. 2005, p. 826, § 3/SB 82; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-3/HB 642.)

**The 2005 amendment**, effective May 5, 2005, in subsection (a), substituted “state laws or rules or regulations” for “rules and regulations of the state merit system” in the fourth sentence, deleted the former fifth through ninth sentences, and added the last sentence.

**The 2009 amendment**, effective July

1, 2009, substituted “State Personnel Administration” for “state merit system” in the middle of the last sentence of subsection (b).

**The 2012 amendment**, effective July 1, 2012, substituted “State Personnel Board” for “State Personnel Administration” in the last sentence of subsection (b).



**Editor's notes.** — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective

date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

### **7-1-43. Disposition of fees collected; payment of expenses from appropriations.**

Fees prescribed by this chapter shall be collected by the department and deposited with the Office of the State Treasurer. The department may, at its discretion, remit such amounts net of the cost of recovery, which cost may include fees paid to a collection agency or attorney for recovery of moneys due the department. All of the expenses incurred in connection with the conduct of the business of the department shall be paid out of the appropriations of funds to the department by the General Assembly. Such expenses shall include all expenses incurred as travel expenses by personnel of the department when away from their official station as assigned by the commissioner. (Ga. L. 1919, p. 135, art. 2, §§ 13, 14; Code 1933, § 13-313; Code 1933, § 13-305, enacted by Ga. L. 1965, p. 540, § 1; Code 1933, § 41A-211, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1995, p. 673, § 5; Ga. L. 2003, p. 843, § 1; Ga. L. 2010, p. 863, § 2/SB 296.)

**The 2010 amendment**, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fis-

cal Services" at the end of the first sentence.

## **PART 3**

### **OPERATIONS OF DEPARTMENT OF BANKING AND FINANCE**

### **7-1-61. Rules and regulations.**

(a) The department shall have the authority to promulgate rules and regulations to effectuate the objectives or provisions of this chapter. Without limiting the generality of the foregoing, the department is expressly authorized to make rules and regulations, consistent with this chapter, relating to organization, operations, and powers of financial institutions to:

(1) Enable financial institutions existing under the laws of this state to compete fairly with financial institutions and others providing financial services in this state existing under the laws of the United States, other states, or foreign governments; or

(2) Protect financial institutions jeopardized or challenged by new economic or technological conditions or by significant changes in the legal environment.

(b) In the exercise of the discretion permitted by this Code section, the commissioner shall consider:

(1) The ability of financial institutions to exercise any additional powers in a safe and sound manner;

(2) The authority of any federally chartered bank, as the term “bank” is defined in Code Section 7-1-621, operating pursuant to federal law, regulation, or authoritative pronouncement;

(3) The powers of other entities providing financial services in this state; and

(4) Any specific limitations on financial institution operations or powers contained in this chapter.

(c) Rules and regulations promulgated by the department may provide for controls, registration, or restrictions reasonably necessary to:

(1) Prevent unfair or deceptive business practices which are prohibited under Code Section 10-1-393;

(2) Prevent deceptive or misleading business practices by financial services providers which may occur by way of alternate delivery systems for the provision of financial products and services such as the Internet or other telecommunication capabilities; or

(3) Prevent or control unfair or deceptive business practices which would operate to the detriment of any competing business or enterprise or to persons utilizing the services of any financial institution, its subsidiary, or affiliate.

(d) All rules and regulations shall be promulgated in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” including the requirements for hearing as stated in that chapter. Regulations issued under this or other provisions of this chapter may make appropriate distinctions between types of financial institutions and may be amended, modified, or repealed from time to time.

(e) To provide parity with other federally insured financial institutions, the commissioner may, by specific order directed to an individual financial institution or category of financial institutions, modify or amend the following qualifying or limiting requirements imposed on financial institutions by this chapter:

(1) Collateral requirements and limits on the amount of obligations owing to it from any one person or corporation;

- (2) Loan to value or other limitations in lending;
- (3) Limitations on the amount of investments in stock or other capital securities of a corporation or other entity;
- (4) Limitations on the amount of bank acceptances to be issued; and
- (5) If Georgia law has been determined to be federally preempted, other limitations or restrictions on financial institutions contained in this chapter.

No such order will be issued unless the commissioner determines that such activity will not present undue safety and soundness risks to the financial institution or institutions involved. In making such a determination, the commissioner shall consider the financial condition and regulatory safety and soundness ratings of the institution or institutions affected and the ability of management to administer and supervise the activity. Any such order pursuant to this subsection will be available for public review. (Code 1933, § 41A-302, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1249, § 1; Ga. L. 1995, p. 673, § 6; Ga. L. 1997, p. 485, § 5; Ga. L. 2000, p. 174, § 3; Ga. L. 2005, p. 826, § 4/SB 82.)

**The 2005 amendment**, effective May 5, 2005, substituted “any federally chartered bank, as the term ‘bank’ is defined in Code Section 7-1-621,” for “national banks” in paragraph (b)(2); redesignated former subsection (c) as present subsection (e), and redesignated former subsections (d) and (e) as present subsections (c) and (d), respectively; substituted “To pro-

vide” for “In the further exercise of the discretion permitted by this Code section and to provide” at the beginning of subsection (e), deleted “real estate” preceding “lending” in paragraph (e)(2), deleted “and” at the end of paragraph (e)(3), substituted “; and” for a period at the end of paragraph (e)(4), and added paragraph (e)(5).

### **7-1-63. Retention of records.**

(a) The department shall issue regulations classifying records kept by financial institutions and prescribing the period, if any, for which records of each class shall be retained and the form in which such records shall be maintained. Such periods may be permanent or for a lesser term of years. In issuing such regulations, consideration shall be given to the objectives of this chapter and to:

- (1) Evidentiary effect in actions at law and administrative proceedings in which the production of records of financial institutions might be necessary or desirable;
- (2) State and federal statutes of limitation applicable to such actions or proceedings;
- (3) Availability of information contained in the records of the financial institution from other sources;



- (4) Requirements of electronic systems of transferring funds; and
- (5) Other pertinent matters;

so that financial institutions will be required to retain records for as short a period as is commensurate with interests of customers, shareholders, and the people of this state.

(b) The regulations of the department shall not require financial institutions to maintain originals of checks or items for the payment of money or original computer tapes or original records with respect to accounts which have been inactive for a period of 12 successive months. Where a financial institution employs computers, its records may consist of legible products of computer operations. (Ga. L. 1953, p. 70, § 3; Ga. L. 1966, p. 692, §§ 45-47; Code 1933, § 41A-304, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 4; Ga. L. 2011, p. 99, § 4/HB 24.)

**The 2011 amendment**, effective January 1, 2013, deleted former subsection (c), which read: "Any copy of a record or of a reproduction of a record stored in an electronic or photographic medium permitted to be kept in lieu of the original, under this Code section or the regulations of the department, including legible products of computer operations, shall be admissible in evidence as though it were the original." See editor's note for applicability.

**Cross references.** — Hearsay rule exceptions, § 24-8-803. Self authentication, § 24-9-902. Public records, § 24-10-1005.

**Editor's notes.** — Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

**Law reviews.** — For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011).

## **7-1-68. Reports to department; publication of summaries; penalty for noncompliance.**

(a) The department may require reports on the condition of or any particular facts concerning any financial institution at any time the department deems it necessary or advisable.

(b) The form of all reports, the information to be contained in them, and the date on which they shall be due shall be prescribed by the department. The reports shall be verified by the oath or affirmation of the president, secretary, or other managing officer of the institution.

(c) Every financial institution shall publish annually abstract summaries of two of its reports of condition designated for this purpose by the department and shall file proof of such publication with the department. Such publication shall be made only once in a newspaper of general circulation in the county of the main office of the institution. The department may waive this requirement, in whole or in part, with respect to financial institutions which make their financial statements readily available to the public, including their customer base, and with respect to a class of financial institutions which does not do business

with the public generally and may limit the required publication to the customer base served by the institution.

(d) Any financial institution which fails to prepare or publish any report or to furnish any proof of publication, in accordance with this Code section, or fails to provide any facts or information requested under subsection (a) of this Code section, shall pay the department a penalty of \$100.00 for each day after the time fixed by the department for filing such report, making such publication, or furnishing such proof of publication, but the department may, in its discretion, relieve any financial institution from the payment of such penalty, in whole or in part, if good cause be shown. If a financial institution fails to pay a penalty from which it has not been relieved, the department may, through the Attorney General, maintain an action at law to recover it. (Ga. L. 1919, p. 135, art. 4, §§ 1, 2, 5; Ga. L. 1920, p. 102, § 1; Ga. L. 1925, p. 165, § 10; Ga. L. 1927, p. 344, § 3; Code 1933, §§ 13-501, 13-502, 25-122, 109-503; Ga. L. 1935, p. 114, § 1; Ga. L. 1937, p. 425, § 1; Ga. L. 1937-38, Ex. Sess., p. 307, § 5; Ga. L. 1943, p. 279, § 1; Ga. L. 1956, p. 742, § 4; Ga. L. 1960, p. 977, § 1; Ga. L. 1960, p. 1175, § 1; Ga. L. 1962, p. 74, § 3; Ga. L. 1968, p. 465, § 8; Code 1933, § 41A-309, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 5; Ga. L. 1981, p. 1366, § 2; Ga. L. 1995, p. 673, § 8; Ga. L. 1998, p. 795, § 5; Ga. L. 2009, p. 86, § 2/HB 141.)

**The 2009 amendment**, effective July 1, 2009, inserted “or fails to provide any facts or information requested under subsection (a) of this Code section,” in the middle of the first sentence of subsection (d).

### **7-1-71. Removal of officers, directors, or employees.**

(a) The department, by order of the commissioner, shall have the right to require the immediate suspension from office of any director, officer, or employee of any financial institution and to prohibit any such person’s participation in the affairs of any financial institution if the department finds such person:

- (1) To be dishonest, incompetent, or reckless in the management of the affairs of the financial institution;
- (2) To have persistently violated the laws of this state;
- (3) To have violated the lawful orders, regulations, or conditions of a written agreement of or with the department;
- (4) To have been indicted for any crime involving moral turpitude or breach of trust;
- (5) To have evidenced an inability to conduct his or her own financial affairs or the affairs of a company in which such individual

owns a majority interest or has responsibility for financial matters, in a fiscally responsible, diligent, or lawful fashion; or

(6) To have engaged in any unsafe or unsound practice in connection with any insured depository institution or to have demonstrated willful or continuing disregard for the safety and soundness of a financial institution.

(b) A prohibition order, which prohibits an individual from participating in any capacity in the affairs of a financial institution, may be issued by the commissioner in connection with a suspension order issued under the authority of this Code section. Such prohibition order may provide that if an officer, director, or employee has been removed from office temporarily or permanently at a financial institution, he or she may also be prohibited from participating in any manner in the conduct of the affairs of any financial institution during the time the prohibition order is in effect.

(c) The department shall serve written notice upon the party of its determination to suspend such person from office or prohibit such person from participating in the affairs of a financial institution pursuant to subsections (a) and (b) of this Code section. A suspension order or a prohibition order shall be effective upon such service and shall specify whether the suspension is temporary, the duration and terms of the suspension if temporary, or if it is permanent. The prohibition order shall be consistent in duration with the suspension order.

(d) Any person suspended or prohibited under this Code section may request his or her reinstatement in writing delivered to the department within ten days of his or her suspension or prohibition. If such reinstatement is not requested, the director, officer, or employee shall be considered permanently removed and, if so ordered, permanently prohibited from participation in the affairs of any financial institution.

(e) Upon request for reinstatement, the department shall conduct an internal review of the matter during which such person has the opportunity to state his or her case to the commissioner. The department shall deliver the findings of the hearing to such person. If the person requests further review, the department may refer the matter to the Office of State Administrative Hearings under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," where a nonpublic hearing shall be held to review the department's decision. The final decision of the department shall be conclusive, except as it may be subject to judicial review under Code Section 7-1-90.

(f) Any order issued pursuant to this Code section shall also be delivered to the financial institution with which the party was associated at the time such order was issued. (Ga. L. 1919, p. 135, art. 5, § 3;



Code 1933, § 13-603; Code 1933, § 41A-312, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1983, p. 602, § 1; Ga. L. 1995, p. 673, § 9; Ga. L. 1997, p. 485, § 7; Ga. L. 2005, p. 826, § 5/SB 82; Ga. L. 2006, p. 72, § 7/SB 465.)

**The 2005 amendment**, effective May 5, 2005, rewrote the introductory paragraph of subsection (a); in paragraph (a)(6), added “or to have demonstrated willfull or continuing disregard for the safety and soundness of a financial institution” at the end; redesignated former subsections (b) through (d) as present subsections (c) through (e), respectively; added subsection (b); rewrote subsection (c); in subsection (d), inserted “or prohibited” near the beginning of the first sen-

tence, and added “or prohibition” at the end, added the language beginning “and, if so ordered,” and ending with “financial institution” at the end of the last sentence; and added subsection (f).

**The 2006 amendment**, effective April 14, 2006, part of an Act to revise, modernize, and correct the Code, substituted “Office of State Administrative Hearings” for “state agency for administrative hearings” in the third sentence of subsection (e).

### **7-1-74. Annual report of department.**

For each calendar year the department shall compile and publish in print or electronically an annual report in such form and containing such information as it may determine necessary to summarize reasonably its operations. The report may contain recommendations which the department may have for changes in the laws governing financial institutions. (Ga. L. 1919, p. 135, art. 2, §§ 15, 16, 17; Ga. L. 1919, p. 135, art. 7, § 28; Ga. L. 1920, p. 102, § 1; Ga. L. 1922, p. 63, § 1; Ga. L. 1925, p. 119, § 1; Code 1933, §§ 13-315, 13-316, 13-317; Code 1933, § 41A-315, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1997, p. 485, § 8; Ga. L. 2010, p. 838, § 10/SB 388.)

**The 2010 amendment**, effective June 3, 2010, inserted “in print or electronically” in the first sentence.

## **PART 4**

### **PROCEEDINGS INVOLVING THE DEPARTMENT OF BANKING AND FINANCE**

### **7-1-91. Orders by department; enforcement; civil penalty.**

(a) Whenever it shall appear to the department that the capital stock of a financial institution has been reduced below the minimum required by law or below the amount required by its articles or that its net assets are less than the amount of its capital stock, the department may issue a written order directing such corporation to restore the deficiency within such period as shall be specified in the order.

(b) Whenever it shall appear to the department that any financial institution is not keeping its books and accounts in such manner as to

enable the department, with reasonable facility, to ascertain the true condition of the financial institution, the department may issue a written order requiring such financial institution, within such period as shall be specified in the order, to open and keep such books as the department may, in its discretion, reasonably determine are essential for the purpose of keeping accurate and convenient records of the transactions and accounts of such financial institution.

(c) Whenever any financial institution shall refuse to submit its records and affairs to a legally conducted examination or investigation by the department, the department may issue a written order requiring such financial institution to permit the commissioner or other duly authorized examiner to make such examination or investigation, within such period as shall be specified in the order.

(d) Whenever it shall appear to the department that any financial institution has violated its articles or any law of this state or any order or regulation of the department or that any financial institution is conducting business in an unsafe or unauthorized manner, the department may issue a written order requiring the financial institution to cease and desist from such unsafe and unauthorized practices.

(e) Whenever a financial institution shall fail to comply with the terms of an order of the department which has been properly issued under the circumstances, the department, upon notice of three days to the financial institution, may, through the Attorney General, petition the principal court for an order directing the financial institution to obey the order of the department within such period as shall be fixed by the court. Upon the filing of such petition, the court shall allow a rule to show cause why it should not be granted. Whenever, after a hearing upon the merits or after failure of the financial institution to appear when ordered, it shall appear that the order of the department was properly issued, the court shall grant the petition of the department.

(f) Any financial institution which violates the terms of any order issued pursuant to this Code section shall be liable for a civil penalty not to exceed \$1,000.00. Each day during which the violation continues shall constitute a separate offense. In determining the amount of penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of the institution, the good faith efforts of the financial institution to comply with the order, the gravity of the violation, the history of previous violations by the financial institution, and such other factors or circumstances as shall have contributed to the violation. The department may at its discretion compromise, modify, or refund any penalty which is subject to imposition or has been imposed pursuant to this Code section. The financial institution or other person assessed as provided in this subsection shall have the right to request a hearing into the matter



within ten days after notification of the assessment has been served upon the financial institution involved; otherwise, such penalty shall be final except as to judicial review as provided in Code Section 7-1-90.

(g) All penalties recovered by the department pursuant to this Code section shall be paid into the state treasury to the credit of the general fund; provided, however, that the department at its discretion may remit such amounts recovered, net of the cost of recovery, in the same manner as prescribed for judgments received through derivative actions pursuant to the provisions of Code Section 7-1-441.

(h) The term “financial institution” as used in this Code section shall include a bank holding company as defined in Code Section 7-1-605 and those entities required to be licensed pursuant to Article 4A of this chapter and any officer, director, employee, agent, or other person participating in the conduct of the affairs of the financial institution subject to the orders issued pursuant to this Code section. (Ga. L. 1919, p. 135, art. 5, § 1; Code 1933, § 13-601; Code 1933, § 41A-402, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 10; Ga. L. 1985, p. 258, § 2; Ga. L. 1998, p. 795, § 8; Ga. L. 2009, p. 86, § 3/HB 141.)

**The 2009 amendment**, effective July 1, 2009, inserted “a bank holding company as defined in Code Section 7-1-605 and” in the middle of subsection (h).

#### **7-1-94. Evidential value of results of examinations or investigations; editing out of information tending to undermine public confidence in financial institution.**

When the record of any examination or investigation of a financial institution by the department or the report by the examiner or employee of the department who conducted such examination or investigation is admissible in evidence under Title 24, the department, with the permission of the court, may edit out of the record or report any portion thereof which is not pertinent to the issue in question before the court or which would tend unnecessarily to affect adversely the public confidence in the financial institution. (Ga. L. 1919, p. 135, art. 2, § 20; Ga. L. 1919, p. 135, art. 3, § 10; Ga. L. 1920, p. 102, § 1; Code 1933, §§ 13-320, 13-410; Ga. L. 1966, p. 692, § 27; Code 1933, § 41A-405, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 12; Ga. L. 2011, p. 99, § 5/HB 24.)

**The 2011 amendment**, effective January 1, 2013, rewrote this Code section. See editor’s note for applicability.

**Cross references.** — Hearsay rule exceptions, § 24-8-803. Self authentication, § 24-9-902. Public records, § 24-10-1005.

**Editor’s notes.** — Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General

Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

**Law reviews.** — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

**7-1-95. Admissibility of department's certificates and copies.**

Repealed by Ga. L. 2011, p. 99, § 6/HB 24, effective January 1, 2013.

**Editor's notes.** — This Code section was based on Ga. L. 1974, p. 705, § 1.

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any

motion made or hearing or trial commenced on or after January 1, 2013.

**Law reviews.** — For article on the 2011 repeal of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

**PART 5**

**PERMISSIVE CLOSING DAYS, EMERGENCY CLOSINGS, BUSINESS RESTRICTIONS, AND VOLUNTARY LIQUIDATIONS**

**7-1-113. Voluntary dissolution prior to commencement of business; failure to properly file articles of dissolution; power of department to seek dissolution.**

(a) A financial institution which has not transacted any business as a financial institution other than organizational business may propose to dissolve by the affirmative vote of shareholders entitled to cast at least two-thirds of the votes which all shareholders are entitled to cast on the plan and by delivering to the department articles of dissolution which shall be executed by two duly authorized officers or shareholders under the seal of the financial institution and which shall contain:

(1) The date of incorporation of the financial institution;

(2) A statement that it has not transacted any business as a financial institution other than organizational business;

(3) A statement that all liabilities of the financial institution have been paid or provided for;

(4) A statement that all amounts received on account of capital stock, paid-in capital, and expense fund, less amounts disbursed for expenses, have been returned to the persons entitled thereto; and

(5) The number of shares entitled to vote on the dissolution and the number of shares voted for and against it, respectively.

(b) The articles of dissolution shall be delivered in duplicate to the department together with the filing fee required by Code Section 7-1-862. If the department is satisfied that the financial institution has not conducted any business other than organizational business and, if it finds that the articles of dissolution satisfy the requirements of this chapter, it shall deliver them with its written approval to the Secretary of State and notify the financial institution of its action. If the department shall disapprove the articles of dissolution, it shall give written notice to the financial institution of its disapproval and a



general statement of the reasons for its decision. The decision of the department shall be conclusive, except as it may be subject to judicial review under Code Section 7-1-90.

(c) If the department determines that a financial institution has not conducted any business other than organizational business and, if articles of dissolution satisfying the requirements of this chapter are not delivered in duplicate to the department together with the filing fee as required by Code Section 7-1-862, the department may make written demand upon the financial institution to immediately provide articles of dissolution or to provide cause why such dissolution should not be pursued directly by the department. If the financial institution fails to provide articles of dissolution as required within 60 days from the date of demand by the department, the department may seek dissolution of the financial institution in organization directly from the Secretary of State's office. (Code 1933, § 41A-502, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 13; Code 1933, § 41A-504, as redesignated by Ga. L. 1978, p. 1714, § 3; Ga. L. 1993, p. 917, § 1; Ga. L. 2011, p. 518, § 2/HB 239.)

**The 2011 amendment**, effective July 1, 2011, added subsection (c).

## PART 7

### RECEIVERSHIP POWERS AND PROCEDURES GENERALLY

#### **7-1-151. Status of department as receiver; restrictions on appointment.**

(a) Upon taking possession of a financial institution, the department shall automatically become the receiver of said institution with all rights, powers, and duties conferred by this chapter and, to the extent not in conflict with this chapter, all rights, powers, and duties of a receiver appointed pursuant to Chapters 5 and 8 of Title 9, relating to injunctions and receivers.

(b) Except as provided in subsection (c) of this Code section, no court shall appoint anyone but the department as receiver of a financial institution. Whenever any court, at the instance of the department, a depositor, a shareholder, or other person entitled by law to institute such proceedings, shall determine that a receiver should be appointed, for any reason whatsoever, it shall appoint the department as such receiver. When thus appointed receiver by a court, the department shall serve in the same manner and with the same limitations and shall have the same rights, powers, and duties as when it becomes receiver by operation of law and without appointment by any court. No court shall impose upon the department as receiver any duties or restrictions in conflict with this chapter.

(c) In any proceeding for the appointment of a receiver of an institution whose deposits or shares are insured by a public body of the United States, the court may upon the recommendation of the department (whether or not the department is a party) appoint said public body or its administrator as receiver. If said public body or its administrator accepts the appointment, it or he or she shall have all the rights, powers, and duties of the department as receiver under this chapter and all the rights, powers, and duties as conferred by other applicable law. The public body or its administrator may act as receiver without bond. (Code 1933, § 41A-702, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2005, p. 826, § 6/SB 82.)

**The 2005 amendment**, effective May 5, 2005, in the next-to-last sentence in subsection (c), inserted “or she” and “all the rights, powers, and duties as conferred by”.

**7-1-157. General powers of department in possession.**

**JUDICIAL DECISIONS**

**Cited in** HWA Props., Inc. v. Cmty. & S. Bank, 322 Ga. App. 877, 746 S.E.2d 609 (2013).

**PART 8**

**CLAIMS, PRIORITIES, AND ACCOUNTING IN RECEIVERSHIPS**

**RESEARCH REFERENCES**

**Am. Jur. Proof of Facts.** — Liability for Torts Committed in Repossession, 42 POF355.

**ARTICLE 2**

**BANKS AND TRUST COMPANIES**

**PART 1**

**GENERAL MATTERS**

**7-1-241. Restrictions on engaging in banking business.**

(a) No person or corporation may lawfully engage in this state in the business of banking or receiving money for deposit or transmission or lawfully establish in this state a place of business for such purpose, except a bank, a national bank, a credit union to the extent provided in Article 3 of this chapter, a licensee engaged in selling checks to the extent permitted by Article 4 of this chapter, an international banking

agency to the extent provided in Article 5 of this chapter, a building and loan association to the extent provided in Article 7 of this chapter, or a savings and loan association to the extent provided by the laws of the United States.

(b) None of the following shall be deemed to be engaged in the business of receiving money for deposit or transmission within the meaning of subsection (a) of this Code section:

(1) A club or hotel to the extent it receives money from members or guests for temporary safekeeping;

(2) An express, steamship, or telegraph company to the extent it receives money for transmission;

(3) An attorney at law, real estate agent, fiscal agent, insurance company, utility company, or any other person or corporation to the extent he or she or it receives and transmits money solely as an incident to a business or profession not governed by this chapter;

(4) Persons or corporations engaged in the business of cashing checks, dispensing cash through credit or debit card activated electronic devices, or recording of financial transactions resulting from and initiated at the point of the sale of goods or services; provided, however, no such person or corporation shall receive deposits except as provided in Code Section 7-1-603 or otherwise engage in the business of banking; or

(5) A securities broker or dealer registered pursuant to the provisions of 15 U.S.C. Section 78o or Chapter 5 of Title 10 to the extent that such securities broker or dealer:

(A) Sells certificates of deposit or interest in certificates of deposit or other deposit instruments issued by a bank or savings association, provided such securities broker or dealer fully and fairly discloses at the time of solicitation and confirmation whether or not federal deposit insurance is available for that deposit instrument;

(B) Purchases certificates of deposit or other deposit instruments issued by a bank or savings association for the account of the customer of such securities broker or dealer, provided such instruments are registered in the name of the customer or the custodian of such customer on the books or other records of the issuing bank or savings association; or

(C) Holds customer funds incidental to the purchase and sale of securities on behalf of such customer.

(c) The department is authorized to promulgate regulations and establish policy, consistent with the objectives of this chapter, which



objectives include for the purposes of this Code section providing for appropriate competition between financial institutions and other financial organizations and protection of the interests of depositors, and to further define, restrict, or require registration of entities which provide financial products and services to the citizens of this state via the Internet, other on-line access to financial products and services, or alternate methods of delivery which differ from geographically based banking. (Ga. L. 1919, p. 135, art. 1, § 4; Code 1933, § 13-204; Ga. L. 1960, p. 1170, § 1; Ga. L. 1966, p. 691, § 1; Code 1933, § 41A-1102, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1985, p. 258, § 3; Ga. L. 1986, p. 458, § 4; Ga. L. 1990, p. 301, § 1; Ga. L. 1997, p. 485, § 10; Ga. L. 2004, p. 631, § 7; Ga. L. 2008, p. 381, § 2/SB 358.)

**The 2008 amendment**, effective July 10<sup>th</sup> for “Code Section 10-5-3” in the introductory language of paragraph (b)(5). 1, 2009, substituted “Chapter 5 of Title

## **7-1-242. Restriction on corporate fiduciaries.**

(a) No corporation, partnership, or other entity may lawfully act as a fiduciary in this state except:

(1) A financial institution authorized to act in such capacity pursuant to the provisions of Georgia law;

(2) A trust company;

(3) A national bank or a state bank lawfully doing a banking business in this state and authorized to act as a fiduciary under the laws of the United States or another state;

(4) A savings bank or savings and loan association lawfully doing a banking business in this state and authorized to act as a fiduciary under the laws of the United States or another state;

(5) Attorneys at law licensed to practice in this state, whether organized as a professional corporation or otherwise;

(6) An investment adviser registered pursuant to the provisions of 15 U.S.C. Section 80b-3 or Chapter 5 of Title 10, provided that this exception shall not authorize an investment adviser to act in any fiduciary capacity subject to the provisions of Title 53, relating to wills, trusts, and the administration of estates, or Title 29, relating to guardianships and conservatorships;

(7) A securities broker or dealer registered pursuant to the provisions of 15 U.S.C. Section 78o or Chapter 5 of Title 10 acting in such fiduciary capacity incidental to and as a consequence of its broker or dealer activities; or

(8) A nonprofit corporation.



(b) Acting as a fiduciary for purposes of this Code section includes but is not limited to:

(1) Accepting or executing trusts or otherwise acting as a trustee;

(2) Administering real or tangible personal property located in Georgia or elsewhere. For the purposes of this paragraph, “administer” means to possess, purchase, sell, lease, insure, safekeep, manage, or otherwise oversee; and

(3) Acting pursuant to a court order as personal representative, executor, or administrator of the estate of a deceased person or as guardian or conservator for a minor or incapacitated person.

(c) Nothing in this chapter shall be construed to repeal or to change Article 15 of Chapter 12 of Title 53 or any other statutes or rules of law on such subject. (Code 1933, § 109-302.1, enacted by Ga. L. 1973, p. 525, § 1; Code 1933, § 41A-1103, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1980, p. 972, §§ 5, 6; Ga. L. 1981, p. 1366, § 4; Ga. L. 1990, p. 301, § 2; Ga. L. 1991, p. 810, § 2; Ga. L. 1998, p. 795, § 13; Ga. L. 2004, p. 631, § 7; Ga. L. 2008, p. 381, § 3/SB 358; Ga. L. 2010, p. 579, § 2/SB 131.)

**The 2008 amendment**, effective July 1, 2009, substituted “Chapter 5 of Title 10” for “Code Section 10-5-3” in paragraphs (a)(6) and (a)(7).

**The 2010 amendment**, effective July 1, 2010, in subsection (a), substituted “entity” for “business association” in the introductory paragraph, substituted “organized” for “incorporated” in the middle of paragraph (a)(5), inserted “that” in the middle and substituted “, or Title 29, relating to guardianships and conservatorships,” for “, or” at the end of

paragraph (a)(6), substituted “, or” for a period at the end of paragraph (a)(7), and added paragraph (a)(8); and substituted the present provisions of subsection (c) for the former provisions, which read: “Nothing in this chapter shall be construed to repeal or to change Part 2 of Article 16 of Chapter 12 of Title 53, dealing with foreign trustees, or Part 3 of Article 16 of Chapter 12 of Title 53, dealing with certain foreign corporations acting as fiduciaries, or any other statutes or rules of law on such subjects.”

### **7-1-243. Restrictions on banking and trust nomenclature.**

(a) Except as provided in subsection (c) of this Code section, no person or corporation except a bank, a national bank, or a corporation lawfully owning the majority of the voting stock of a bank or national bank or a subsidiary of such bank, national bank, or corporation shall use the words “bank,” “banker,” “banking company,” “banking house,” or any other similar name indicating that the business done is that of a bank upon any sign at its place of business or elsewhere, or upon any of its letterheads, billheads, blank checks, blank notes, receipts, certificates, circulars, advertisements, or any other written or printed matter.

(a.1) Except as provided in subsection (c) of this Code section, no person or corporation except a credit union or a federal credit union

shall use the words “credit union,” or any other similar name indicating that the business done is that of a credit union upon any sign at its place of business or elsewhere, or upon any of its letterheads, billheads, blank checks, blank notes, receipts, certificates, circulars, advertisements, or any other written or printed matter.

(b) Except as provided in subsection (c) of this Code section, no person or corporation except:

(1) A corporation lawfully authorized to exercise trust powers or any subsidiary thereof;

(2) A corporation lawfully owning the majority of the voting stock of any corporation authorized to exercise trust powers, or any subsidiary of such owner corporation;

(3) An enterprise whose structure is in the nature of a trust where the trustees include a corporation lawfully authorized to exercise trust powers in this state; or

(4) An eleemosynary institution

shall use the words “trust” or “trust company” or any similar name indicating that the business done is that of a trust company upon any sign at its place of business or elsewhere, or upon any of its letterheads, billheads, blank checks, blank notes, receipts, certificates, circulars, advertisements, or any other written or printed matter.

(c) Nothing in this Code section shall be construed to:

(1) Prevent the use of the words “banks,” “banker,” “banking,” “banker’s,” “trust,” or any similar word in a context clearly not purporting to refer to a banking or a trust business or to a business primarily engaged in the lending of money, underwriting or sale of securities, acting as a financial planner, financial service provider, investment or trust adviser, or acting as a loan broker;

(1.1) Prevent the use of the words “credit union,” or any similar word in a context clearly not purporting to refer to a credit union or to a business primarily engaged in the lending of money, or accepting shares or deposits or acting as a loan broker;

(2) Prohibit advertisement in media distributed in or transmitted into this state by persons or corporations lawfully engaged in the banking, credit union, or trust business outside of this state; or

(3) Prevent any person or corporation from continuing to use its name legally in use on April 1, 1989.

(d) The department shall advise the Secretary of State of any corporate name or proposed corporate name it deems to be inconsistent with this Code section. (Ga. L. 1927, p. 344, §§ 1, 2; Code 1933,

§ 109-502; Ga. L. 1974, p. 463, § 1; Code 1933, § 41A-1104, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1978, p. 1717, § 3; Ga. L. 1981, p. 1366, § 5; Ga. L. 1989, p. 1257, § 2; Ga. L. 1999, p. 674, § 3; Ga. L. 2009, p. 86, § 4/HB 141; Ga. L. 2010, p. 878, § 7/HB 1387.)

**The 2009 amendment**, effective July 1, 2009, added subsection (a.1); and, in subsection (c), added paragraph (c)(1.1) and inserted “, credit union,” near the end of paragraph (c)(2).

**The 2010 amendment**, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (a.1) and paragraph (c)(1.1).

## PART 3

### POWERS OF BANKS

#### 7-1-280. Major banking powers.

#### RESEARCH REFERENCES

**Am. Jur. Proof of Facts.** — Damages for Breach of Contract to Lend Money, 41 POF2d 337.

#### 7-1-285. Limits on obligations of one person or corporation.

(a) As used in this Code section, the term:

(1) “Credit exposure as a counterparty in derivative transactions” means an amount that the bank reasonably determines pursuant to a methodology acceptable to the department under the terms of the derivative or otherwise would be its loss if a counterparty were to default on the date of determination, taking into account any netting and collateral arrangements and any guarantees or other credit enhancements; provided, however, that the bank may elect to determine credit exposure on the basis of such other method of determining credit exposure as may be permitted by the department and the bank’s primary federal regulator.

(2) “Derivative transaction” includes any transaction that is an agreement, contract, note, option, swap, or warrant that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(3) “Person or corporation” includes, but is not limited to, an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, or unincorporated organization. The term “person or corporation” shall not include the affiliates of a bank or a clearing organization registered or exempt from registra-



tion with the Commodity Futures Trading Commission, the Securities and Exchange Commission, any other federal agency, or any successor agencies.

(a.1) A bank shall not at any time:

- (1) Make loans to any one person or corporation;
- (2) Have obligations owing to it from any one person or corporation as a result of purchasing or discounting evidences of indebtedness or agreements for the payment of money; or
- (3) Have credit exposure as a counterparty in derivative transactions with any one person or corporation,

where the aggregate of such loans, obligations, and credit exposure together exceeds 15 percent of the statutory capital base of the bank unless each loan, discount, purchase, or derivative transaction in excess of such 15 percent limit is approved in advance by the board of directors or a committee authorized to act for it.

(b) Except as provided in subsection (c) of this Code section, a bank shall not directly or indirectly make loans, have obligations, or have credit exposure as a counterparty in derivative transactions to any one person or corporation which in aggregate exceed 15 percent of the statutory capital base of the bank unless the entire amount of such loans, obligations, and credit exposure in derivative transactions is secured by good collateral or other ample security and does not exceed 25 percent of the statutory capital base. Except as otherwise indicated in subsection (c) of this Code section, the purchase or discount of agreements for the payment of money or evidences of indebtedness shall be regarded as indirect loans to the person or corporation receiving the proceeds of such transactions. In estimating the legal lending limit for any one person or corporation, loans to related corporations, partnerships, and other entities shall be combined subject to regulations established by the department.

(c) The limitations of subsection (b) of this Code section shall not apply to:

- (1) Obligations arising from the purchase or discount of drafts drawn in good faith against actually existing values or commercial or business paper actually owned by the person negotiating the paper to the extent of 25 percent of the statutory capital base of the bank;
- (2) Obligations arising from the bona fide purchase of commercial or business paper, subject to restrictions which the department may impose by regulation, taken in sale or service transactions incident to a business where the party to whom the goods or services are provided is obligated on the paper;



(3) Obligations in the form of bona fide loans upon the security of agricultural, manufactured, or industrial products or livestock (or documents of title covering such property) for which there is a ready sale in open market, provided no more than 80 percent of the market value of such products is loaned or advanced thereon, the bank has the right to demand additional collateral to maintain this ratio and does so maintain it, and the bank's interest in such collateral is fully protected by insurance against loss by fire and other standard hazards; and provided, further, that such obligations shall qualify for exemption for not more than ten months if secured by nonperishable staples and for not more than six months if secured by frozen or refrigerated staples;

(4) Obligations of and obligations guaranteed by:

(A) The United States;

(B) The State of Georgia or a public body thereof authorized to levy taxes; or

(C) Any state of the United States or any public body thereof if the obligations or guarantees are general obligations;

(5) Obligations to the extent secured by:

(A) Obligations specified in paragraph (6) of this subsection;

(B) Obligations which the bank would be authorized to acquire without limit as investment securities pursuant to Code Section 7-1-287;

(C) Obligations fully guaranteed by the United States;

(D) Guaranties or commitments or agreements to take over or purchase made by any public body of the United States or any corporation owned directly or indirectly by the United States; or

(E) Loan agreements between a local public agency or a public housing agency and an instrumentality of the United States pursuant to national housing legislation under which funds will be provided for payment of the obligations secured by such loan agreements;

(6) Obligations in the form of investment securities acquired pursuant to Code Section 7-1-287;

(7) Obligations with respect to acceptances under Code Section 7-1-284;

(8) Obligations with respect to the sale of federal or correspondent funds to financial institutions having their deposits insured to the same extent as that required of similar institutions chartered in this state; and

(9) A renewal or restructuring of a loan as a new loan or extension of credit following the exercise by the bank of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limits of this Code section, unless:

(A) New funds are advanced by the bank to the borrower, except as permitted under this Code section;

(B) A new borrower replaces the original borrower; or

(C) The department determines that a renewal or restructuring was undertaken as a means to evade the bank's lending limit.

(d) In lieu of following the limitations contained in subsections (a) through (c) of this Code section, a bank may petition the department for approval to utilize limits applicable to national banks regarding obligations of a single person or corporation.

(e) The department may, by regulation not inconsistent with this Code section, prescribe definitions of and requirements for transactions included in or excluded from the indebtedness to which this Code section applies. The department may also by regulation prescribe less restrictive limitations than those listed in subsections (a) through (c) of this Code section for banks meeting certain financial and management criteria. In addition, the department may, by regulation or otherwise, specify that the liabilities of a group of one or more persons or corporations or both shall be considered as owed by one person or corporation for the purposes of this Code section because the group relies substantially on a common source for the payment of its obligations or makes common use of funds received by it, or meets other criteria established by the department for the combination of indebtedness for legal lending limitation purposes. (Ga. L. 1919, p. 135, art. 19, § 13; Ga. L. 1922, p. 63, § 1; Ga. L. 1927, p. 195, § 9; Code 1933, § 13-2013; Ga. L. 1943, p. 254, § 1; Ga. L. 1951, p. 201, § 1; Ga. L. 1955, p. 414, § 1; Ga. L. 1966, p. 590, § 7; Ga. L. 1969, p. 603, § 1; Ga. L. 1973, p. 526, § 4; Code 1933, § 41A-1306, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 8; Ga. L. 1982, p. 3, § 7; Ga. L. 1983, p. 602, § 6; Ga. L. 1992, p. 6, § 7; Ga. L. 2000, p. 174, § 6; Ga. L. 2009, p. 86, § 5/HB 141; Ga. L. 2010, p. 1, § 1/HB 926; Ga. L. 2012, p. 349, § 1/HB 886.)

**The 2009 amendment**, effective July 1, 2009, in subsection (b), substituted the present last sentence for the former last sentence which read: "In estimating loans to any individual person, all amounts loaned to firms and partnerships of which he is a member shall be included."; and, at the end of the last sentence of subsection (e), added ", or meets other criteria estab-

lished by the department for the combination of indebtedness for legal lending limitation purposes".

**The 2010 amendment**, effective February 11, 2010, in subsection (c), deleted "and" from the end of paragraph (c)(7), substituted "; and" for a period at the end of paragraph (c)(8), and added paragraph (c)(9).

**The 2012 amendment**, effective July 1, 2012, added subsection (a); redesignated former subsection (a) as present subsection (a.1); in subsection (a.1), deleted “or” at the end of paragraph (a.1)(1), added “; or” at the end of paragraph (a.1)(2), and added paragraph (a.1)(3), and in the undesignated language at the end of subsection (a.1), substituted “such loans, obligations, and credit exposure” for “said loans and obligations” and substituted “purchase, or derivative transaction in excess of such” for “or purchase trans-

action in excess of said”; and, in subsection (b), in the first sentence, inserted “, have obligations, or have credit exposure as a counterparty in derivative transactions” and inserted “, obligations, and credit exposure in derivative transactions”, and, in the last sentence, substituted “one person or corporation” for “individual person”.

**Law reviews.** — For annual survey on business corporations, see 64 Mercer L. Rev. 61 (2012).

## **7-1-286. Real estate loans; acquisition by bank or trust company of ownership interest.**

(a) A bank shall make loans secured by improved or unimproved real estate (including a leasehold) subject to the provisions of Part 365 of the Federal Deposit Insurance Corporation’s rules and regulations, including 12 C.F.R. 365.1 and 365.2 and the Interagency Guidelines for Real Estate Lending Policies in Appendix A and 12 C.F.R. 208.51 and the guidelines contained in 12 C.F.R. Part 208 in the case of Federal Reserve member banks. Such loans shall also be subject to the additional provisions and exceptions as set forth in the rules of the department.

(b) The limitations of subsection (a) of this Code section shall not apply to:

(1) An investment security acquired pursuant to Code Section 7-1-287;

(2) A loan in connection with which the bank takes a real estate lien as security in the exercise of banking prudence but as to which it is relying for repayment on:

(A) The general credit of the obligor or of an installment buyer or of a lessee of the real estate;

(B) Collateral other than the real estate lien;

(C) A guaranty or an agreement to take over or purchase the loan, in the event of default, by a financially responsible person other than a person engaged in the business of guaranteeing real estate loans; or

(D) An agreement by a financially responsible person to take over or purchase the loan, or to provide funds for payment thereof, within a period of two years from the date of the loan;

and there is documentation in the file setting forth the applicable facts to support reliance on this paragraph.



(c) For the purpose of this Code section, a “leasehold” shall mean the interest, which is security for a loan, of a lessee of real estate under a lease which on the date of the loan has an unexpired term extending at least ten years beyond the maturity of the loan or contains a right of renewal, which may be exercised by the bank, extending at least ten years beyond the maturity of the loan.

(d) Notwithstanding any other provisions of this chapter and otherwise subject to regulations of the department, a bank or trust company may acquire, directly or indirectly, an ownership interest in real estate incidental to the financing of the purchase, development, or improvement of such real estate, provided:

(1) The amount of such ownership interest shall not exceed 25 percent of the appraised value of the real estate;

(2) The amount of such ownership interest when aggregated with the amount financed shall not exceed the limitations prescribed by this Code section and Code Section 7-1-285;

(3) The ownership interest shall be terminated upon substantial repayment of the financing in the manner prescribed in Code Section 7-1-263, relating to the divestiture of real estate interest; and

(4) Any time real estate owned by a bank or trust company pursuant to this subsection is held or disposed of pursuant to the provisions of Code Section 7-1-263, said action to hold or dispose shall be reported in writing annually to the stockholders. Said report shall include disclosure of any real estate acquired by foreclosure or the taking by a deed in lieu of foreclosure and the name or names of the corporation or individuals from whom title was taken. (Ga. L. 1919, p. 135, art. 19, § 15; Code 1933, § 13-2015; Ga. L. 1937, p. 423, § 1; Ga. L. 1945, p. 208, § 1; Ga. L. 1959, p. 250, § 1; Ga. L. 1965, p. 281, § 1; Ga. L. 1972, p. 556, § 1; Code 1933, § 41A-1307, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 18; Ga. L. 1989, p. 1249, § 4; Ga. L. 1992, p. 6, § 7; Ga. L. 1998, p. 795, § 14; Ga. L. 2000, p. 174, § 7; Ga. L. 2001, p. 970, § 2; Ga. L. 2007, p. 502, § 2/SB 70.)

**The 2007 amendment**, effective July 1, 2007, substituted the present provisions of subsection (a) for the former provisions which read: “(a) Except as provided in subsection (b) of this Code section, a bank shall make a loan secured by improved or unimproved real estate (including a leasehold) only where such loan is:

“(1) Secured by a mortgage, deed of trust, security deed, or similar instrument providing a first lien or a first security title or is otherwise secured in accordance

with regulations prescribed by the department;

“(2) For not more than 75 percent of the fair market value of the real estate in the case of a single maturity loan or for not more than 95 percent of the fair market value of the real estate in the case of loans that must be regularly amortized; provided, however, that these limitations shall not apply to:

“(A) Any loan secured by real estate made to finance construction of an improvement or development, in which case

the amount of the loan shall not exceed 100 percent of the estimated completed value of the improvements;

“(B) Any loan which the federal housing administrator insures or makes a commitment to insure;

“(C) Any loan which the secretary of veterans affairs guarantees or makes a commitment to guarantee;

“(D) Any loan secured by a mortgage, deed of trust, security deed, or similar instrument providing for a nonpurchase money lien on residential real property owned and occupied by the borrower, provided that such loan may not exceed 100 percent of the fair market value of the real

estate after deducting all outstanding liens on the property; or

“(E) Any other type of loan or a portion thereof with respect to which the department determines that banks may safely extend loans in excess of the foregoing limitations;

“(3) Conforms with requirements as to duration, amortization, appraisal, insurance, and documentation, as may be prescribed by regulation of the department.”

**Law reviews.** — For note, “Opportunity Costs: Nonjudicial Foreclosure and the Subprime Mortgage Crisis in Georgia,” see 25 Ga. St. U.L. Rev. 1205 (2009).

### 7-1-288. Corporate stock and securities.

(a) A bank may engage in any transaction with respect to shares of stock or other capital securities of any corporation in accordance with this Code section and in other instances as provided in state or federal law.

(b) A bank may:

(1) Engage in transactions with respect to issuance and transfer of shares of its own stock and capital securities and in other transactions with respect to such stock and capital securities authorized by this chapter;

(2) Purchase and sell shares of stock, bonds, capital securities, and other investment products upon the order of and for the account of a customer without recourse against it;

(3) Receive a pledge or other security interest in stock or capital securities in order to secure loans made in good faith, except that it may not receive such interests in its own stock or capital securities nor lend in one or more transactions, involving one or more borrowers, more than 30 percent of its statutory capital base on the stock or capital securities of any corporation (including therein loans made directly to the corporation without ample security but excluding obligations representing the sale of federal or correspondent funds to another financial institution). The department may, by regulation or otherwise, specify that two or more corporations are so interrelated that their stock shall be regarded as the stock of one corporation for the purposes of this subsection.

(c) Notwithstanding any other provisions of law to the contrary, a bank may acquire and hold for its own account:

(1) Shares of stock of a federal reserve bank without limitation of amount;

(2) Shares of stock or interests in:

(A) Any state or federal government sponsored instrumentality for the guarantee, underwriting, or marketing of residential housing or financing of residential housing;

(B) A business development corporation or small minority business development corporation authorized under Article 6 of this chapter;

(C) An agricultural credit corporation duly organized under the laws of this state having authority to make loans to farmers of this state for agricultural purposes under programs administered by the federal farm credit system;

(D) A bank service corporation created to provide support services for one or more financial institutions;

(E)(i) A bank principally engaged in foreign or international banking or banking in a dependency or insular possession of the United States, either directly or through the agency, ownership, or control of local institutions in foreign countries or in such dependencies or insular possessions, including the stock of one or more corporations existing pursuant to Section 25(a) of the Federal Reserve Act, provided that, before a bank may purchase a majority interest in any such banking institution, it shall enter into an agreement with the department to restrict its operations in such manner as the department may prescribe; and provided, further, that, if the department determines that said restrictions have not been complied with, it may order the disposition of said stock upon reasonable notice.

(ii) A bank engaged in providing banking or other financial services to depository financial institutions, which bank's ownership consists primarily of such depository financial institutions;

(F) A corporation or limited liability company engaged in functions or activities that the bank or trust company is authorized to carry on, including, but not limited to: conducting a safe-deposit business; holding real estate; acting as a financial planner or investment adviser; offering of a full range of investment products; promoting and facilitating international trade and commerce; and exercising powers incidental to financial activities as provided in paragraph (11) of Code Section 7-1-261; in addition to functions or activities which include exercising powers granted by department regulations or exercising powers determined by the commissioner to be financial in nature or incidental to the provision of financial services, so long as these activities do not pose undue risk to the



safety and soundness of the financial institution and are consistent with the objectives of this chapter as stated in Code Section 7-1-3; provided, however, unless the bank is exempt, nothing contained in this subparagraph shall relieve any such corporation or limited liability company from undertaking registration, licensing, or other qualification to engage in such functions or activities as may otherwise be required by law; and

(G) Other corporations created pursuant to act of Congress or pursuant to Chapter 3 of Title 14, known as the "Georgia Nonprofit Corporation Code," for the purpose of meeting the agricultural, housing, health, transit, educational, environmental, or similar needs where the department determines that investment therein by banks is in the public interest;

(3) Shares of stock of small business investment companies organized under acts of Congress and doing business in this state, provided that the aggregate investment by the bank in such shares shall not exceed 5 percent of its statutory capital base; and

(4) Shares of stock or partnership interests in a corporation or partnership the primary business of which, as determined by the department, is to promote the public welfare or community development by engaging in the development of low and moderate-income housing, job training and job placement programs, credit counseling, public education regarding financial matters, small business development, and other similar purposes. The ability to invest in such stock or partnership interests shall also be subject to such limitations and approval procedures as the department deems necessary in order to assure that such investments are not a safety and soundness concern.

(d) A bank acquiring stock or an interest in an entity listed in paragraph (2) of subsection (c) of this Code section shall be subject to the following limitations:

(1) Where the entity carries on only such activities as the bank could legally perform itself, there is no limitation on investment;

(2) Where the activities of the entity go beyond those that the bank could legally perform, the bank's investment may not exceed 10 percent of its statutory capital base; and

(3) Where the investment is in stock of the Federal Home Loan Bank, there is no limitation on the bank's investment, provided such investment is for the purpose of utilizing the services of the Federal Home Loan Bank.

(e) Prior approval by the department is required for acquisitions listed in subparagraphs (c)(2)(D) through (c)(2)(G) of this Code section.

The department, by regulation, may permit expedited or notice only procedures and may provide for applicable administrative fees.

(f) The department may by rule or regulation prescribe less restrictive investment limitations than those contained in this Code section for banks meeting certain financial and management criteria. (Ga. L. 1919, p. 135, art. 19, §§ 20, 23; Ga. L. 1924, p. 76, § 1; Ga. L. 1927, p. 195, § 10; Code 1933, §§ 13-2017, 13-2023; Ga. L. 1946, p. 65, § 1; Ga. L. 1947, p. 501, § 1; Ga. L. 1950, p. 18, § 1; Ga. L. 1951, p. 284, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 328, § 1; Ga. L. 1957, p. 275, § 1; Ga. L. 1958, p. 133, § 1; Ga. L. 1959, p. 238, § 1; Ga. L. 1959, p. 328, § 1; Ga. L. 1962, p. 95, § 1; Ga. L. 1965, p. 523, § 1; Code 1933, § 13-2023.1, enacted by Ga. L. 1968, p. 1042, § 1; Ga. L. 1968, p. 1162, § 1; Ga. L. 1969, p. 976, § 1; Ga. L. 1972, p. 798, § 6; Code 1933, § 41A-1309, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 19; Ga. L. 1977, p. 730, § 3; Ga. L. 1979, p. 953, § 1; Ga. L. 1983, p. 602, § 7; Ga. L. 1984, p. 22, § 7; Ga. L. 1987, p. 1586, § 4; Ga. L. 1989, p. 1249, § 6; Ga. L. 1995, p. 673, § 13; Ga. L. 1996, p. 6, § 7; Ga. L. 1997, p. 143, § 7; Ga. L. 1997, p. 485, § 12; Ga. L. 1999, p. 674, § 6; Ga. L. 2000, p. 174, § 8; Ga. L. 2001, p. 970, § 3; Ga. L. 2002, p. 1220, § 5; Ga. L. 2005, p. 826, § 7/SB 82.)

**The 2005 amendment**, effective May 5, 2005, inserted “or limited liability com-pany” in two places in subparagraph (c)(2)(F).

## PART 6

### DEPOSITS, SAFE-DEPOSIT AGREEMENTS, AND MONEY RECEIVED FOR TRANSMISSION

#### 7-1-352. Deposit by agent, trustee, or other fiduciary.

#### JUDICIAL DECISIONS

##### **Section protects bank against breaches by corporate agent.**

Purpose of O.C.G.A. § 7-1-352 is to protect a bank from liability in the event that an agent or fiduciary misappropriates funds of an owner in breach of the agency or trust without the bank's knowledge, and the statute protects a bank from liability for embezzlement by a signatory on a corporate bank account if the person setting up the account had the authority to do so and if the bank was without knowledge of the embezzlement. *Atlanta Sand & Supply Co. v. Citizens Bank*, 276 Ga. App. 149, 622 S.E.2d 484 (2005).

**Corporate officer's authority.** — Be-

cause a company's corporate resolution authorized one of its officers to make deposits to and withdrawals from an account maintained at a bank, and the officer, in the process of making deposits to the account, illegally took cash back from the deposits for the officer's personal use, the bank was shielded from liability for conversion by O.C.G.A. § 7-1-352 because the corporate resolution, as well as a signature card bearing the officer's signature, gave the officer authority to deal with the account. *Atlanta Sand & Supply Co. v. Citizens Bank*, 276 Ga. App. 149, 622 S.E.2d 484 (2005).

**7-1-353. Adverse claims to deposits and property held in safe deposit.****JUDICIAL DECISIONS**

**Cited** in *Fedina v. Larichev*, 322 Ga. App. 76, 744 S.E.2d 72 (2013).

**7-1-360. Third-party claims; notification of disclosure by third party to depositor; motion to quash disclosure.**

(a) No financial institution shall be required to recognize the claim of any third party to any deposit, or withhold payment of any deposit to the depositor or to his order, unless and until the financial institution is served with citation, order, or other appropriate process issuing out of a court of competent jurisdiction in connection with a suit instituted by such third party for the purpose of recovering or establishing an interest in such deposit. Neither shall any financial institution be required to disclose or produce to third parties, or permit third parties to examine any records pertaining to a deposit account, loan account, or other banking relationship except:

(1) Where the financial institution itself is a proper or necessary party to a proceeding in a court of competent jurisdiction;

(2) Where the records of accounts or other customer records are requested through subpoena or other administrative process issued by a state, federal, or local administrative agency having competent jurisdiction over the depositor or other customer or where such records are requested pursuant to Georgia or federal law governing civil practice or procedure in conjunction with an ongoing civil action in a Georgia state or federal court of competent jurisdiction;

(3) Where the records of accounts or other customer records are requested in conjunction with an ongoing criminal or tax investigation of the depositor or other customer by a state or federal grand jury, taxing authority, or law enforcement agency; or

(4) Where the records of accounts or other customer records are requested by any state or federal regulatory agency having jurisdiction over the financial institution.

(b) Unless directed otherwise by a court of competent jurisdiction, before disclosure, production, or examination of records produced under paragraph (1) or (2) of subsection (a) of this Code section, the agency or other party seeking the disclosure or production of the records shall provide notification to the depositor or other customer of such request. Notification of the depositor or other customer under circumstances set forth in paragraphs (3) and (4) of subsection (a) of this Code section



shall not be made without the consent of the requesting authority. For purposes of ascertaining whether or not proper notice has been given or whether or not the depositor or other customer may be notified, the financial institution may rely upon appropriate certification or written assurances from the requesting party and in doing so shall be relieved of any liability which might be asserted in connection with such disclosures.

(c) Each customer or depositor to whom notice of an order, subpoena, or request for disclosure, examination, or production of records was lawfully given may, prior to the date specified therein for disclosure, examination, or production, file in the court issuing an order or subpoena for the records or in the Georgia or federal court where the civil matter is being heard or, in the absence of such a court, in the superior court of the county in which the financial institution is located a motion to quash the order, subpoena, or request or for a protective order and shall serve such motion on the party requesting disclosure and the financial institution as may be otherwise provided by law for similar motions. Failure to file and serve such motion to quash or for protection shall constitute consent for all purposes to disclosure, production, or examination made pursuant to this Code section. (Code 1981, § 7-1-360, enacted by Ga. L. 1989, p. 1211, § 6; Ga. L. 2005, p. 826, § 8/SB 82.)

**The 2005 amendment**, effective May 5, 2005, in paragraph (a)(2), added the language beginning “or where such records” at the end; and, in subsection (c), inserted “or in the Georgia or federal court where the civil matter is being heard” near the middle, and inserted “and the financial institution” and “may be” near the end of the first sentence.

## JUDICIAL DECISIONS

**Discovery compelled by court of competent jurisdiction.** — Compliance with Fed. R. Bankr. P. 2004(c) satisfies the requirement of O.C.G.A. § 7-1-360 that discovery of records of a financial institution be compelled by a court of competent jurisdiction. In re Bennett, No. 07-77463, 2008 Bankr. LEXIS 1742 (Bankr. N.D. Ga. Apr. 15, 2008).

Chapter 7 trustee’s motion for a Fed. R. Bankr. P. 2004 examination of a law firm as to documents relating to the real estate closing to which the debtors were parties

was granted with the requirement that the trustee subpoena the firm because the trustee was not required to serve the motion, which could be granted ex parte, on the debtors under Fed. R. Bankr. P. 9013 and compliance with Fed. R. Bankr. P. 2004(c) satisfied the requirement of O.C.G.A. § 7-1-360 that discovery of records of a financial institution be compelled by a court of competent jurisdiction. In re Bennett, No. 07-77463, 2008 Bankr. LEXIS 1742 (Bankr. N.D. Ga. Apr. 15, 2008).

## PART 7

## BANKING DEPOSITORIES, RESERVES, AND REMISSIONS

**7-1-372. Remission of checks at par; collection charge; service charge.**

## JUDICIAL DECISIONS

**Cited** in *Bank of Am., N.A. v. Sorrell*, 248 F. Supp. 2d 1196 (N.D. Ga. 2002).

## PART 8

## INCORPORATION OF BANKS AND TRUST COMPANIES

**7-1-392. Articles of incorporation; advertisement of articles or notice of application; naming registered agent.**

## JUDICIAL DECISIONS

**Corporation did not have power to act as trustee.** — Probate court did not err by appointing a successor trustee pursuant to O.C.G.A. §§ 15-9-127 and 53-12-170 as even if a corporation had not rejected the trust property, it did not have the power to act as a trustee in Georgia as it had not received approval from the Georgia Department of Banking and Fi-

nance to act as a trust company; a county board of commissioners was properly appointed as the successor trustee in spite of the corporation's speculation over a possible future event that might result in a conflict of interest. *Chattowah Open Land Trust, Inc. v. Jones*, 281 Ga. 97, 636 S.E.2d 523 (2006).

**7-1-396. Effect of certificate of incorporation; permit to begin business.**

(a) As of the issuance of the certificate of incorporation by the Secretary of State, the corporate existence of the bank or trust company shall begin and those persons who subscribed for shares prior to filing of the articles, or their assignees, shall be shareholders in the bank or trust company; provided, nevertheless, that the department shall have full authority to regulate and supervise the activities of promoters, incorporators, initially named directors, subscribers for shares, and all persons soliciting offers to subscribe for shares in any bank in formation under this chapter even though the corporate existence of the bank may not have officially begun and the bank in formation shall be considered a "bank" for those purposes. Persons named in the articles of incorporation and approved by the department as initial directors of the bank in formation shall not be considered "agents" or "broker-dealers" within the meaning of paragraphs (1) and (3) of Code Section 10-5-2.

(b) The certificate of incorporation shall be conclusive evidence of the fact that the bank or trust company has been incorporated; but proceedings may be instituted by the state to dissolve, wind up, and terminate a bank or trust company in accordance with Code Section 7-1-92 and other applicable provisions of this chapter.

(c) Until receipt of a permit to begin business issued by the department, a bank or trust company shall not transact any business except such business as is incident to its organization or to the obtaining of subscriptions and payment for its shares and other securities.

(d) The department shall issue to a bank or trust company a permit to begin business when:

(1) Capital stock of the bank or trust company shall have been fully paid in, in cash, and in no event in an amount less than the minimum capital stock for banks or trust companies under Code Section 7-1-410, and, in addition, there shall have been paid in:

(A) Paid-in capital in an amount not less than 20 percent of the capital stock;

(B) An expense fund in an amount fixed by the department which shall not be less than 5 percent of the capital stock; and

(C) The proceeds of subordinated securities, if any, which were considered part of the capital structure of the bank or trust company by the department under Code Section 7-1-419 in giving its approval of the proposed institution;

(2) All of the directors have taken the oath or affirmation required by Code Section 7-1-484;

(3) The bylaws of the bank or trust company have been filed with the department;

(4) The bank or trust company has designated its registered agent and registered office pursuant to Code Section 7-1-132;

(5) The bank or trust company has been organized and is ready to begin the business for which it was incorporated;

(6) All conditions imposed by the department in giving its approval of the proposed bank or trust company under Code Section 7-1-394 have been satisfied; and

(7) The department has received an affidavit signed by the president or secretary and by at least a majority of the directors of the bank or trust company to the effect that all of the foregoing requirements of this subsection have been satisfied. (Ga. L. 1919, p. 135, art. 8, §§ 7, 8; Code 1933, §§ 13-908, 13-909; Ga. L. 1963, p. 511, §§ 1, 2; Ga. L. 1966, p. 692, §§ 14, 16; Code 1933, § 41A-1807, enacted by Ga.



L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 23; Ga. L. 1977, p. 730, § 5; Ga. L. 1987, p. 1586, § 6; Ga. L. 1991, p. 94, § 7; Ga. L. 1998, p. 795, § 17; Ga. L. 2008, p. 381, § 4/SB 358.)

**The 2008 amendment**, effective July 1, 2009, substituted “‘agents’ or ‘broker-dealers’ within the meaning of paragraphs (1) and (3) of Code Section 10-5-2” for “‘limited salesmen’ or ‘salesmen’ within the meaning of paragraphs (18) and (25), respectively, of subsection (a) of Code Section 10-5-2 but rather shall be considered ‘executive officers’ within the meaning of paragraph (13) of subsection (a) of Code Section 10-5-2” at the end of the last sentence of subsection (a).

## PART 9

### FINANCIAL STRUCTURE

#### 7-1-415. Consideration for shares.

(a) Except as provided in subsection (b) of this Code section and in the case of a distribution of shares under subsection (e) of Code Section 7-1-488 or incident to a merger, consolidation, or other corporate reorganization or rehabilitation authorized by this chapter, shares of a bank or trust company may be issued only for cash in an amount which shall be at least the aggregate par value of the share, unless otherwise approved by the department with the demonstration of good cause, plus such amounts, if any, necessary to assure that after issuance of the shares the bank or trust company will have the paid-in capital required by Code Section 7-1-411 and, in the case of a new bank or trust company, the expense fund required by Code Section 7-1-396.

(b) Where a bank or trust company issues shares in exchange for or in order to convert other shares or obligations which have been issued by it, the consideration for such shares shall be:

(1) The cash originally received for the shares or obligations surrendered or converted;

(2) The additional cash received incident to the exchange or conversion;

(3) The other amounts, if any, transferred to capital stock incident to the exchange or conversion.

In any such case the consideration shall be not less than the minimum amount specified in subsection (a) of this Code section. Any amount by which capital stock may be reduced upon an exchange or conversion shall be transferred to paid-in capital. (Ga. L. 1898, p. 78, § 1; Civil Code 1910, § 2815; Ga. L. 1919, p. 135, art. 8, § 7; Code 1933, §§ 13-908, 109-101; Ga. L. 1963, p. 511, § 1; Code 1933, § 13-912, enacted by Ga. L. 1966, p. 590, § 3; Ga. L. 1966, p. 692, § 14; Ga. L. 1968, p. 1045, § 1; Ga. L. 1969, p. 958, § 1; Ga. L. 1972, p. 384, § 1;

Code 1933, § 41A-1906, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2012, p. 795, § 1/HB 945.)

**The 2012 amendment**, effective July 1, 2012, inserted “, unless otherwise approved by the department with the demonstration of good cause,” near the middle of subsection (a).

**Law reviews.** — For annual survey on business corporations, see 64 Mercer L. Rev. 61 (2012).

## PART 10

### SHAREHOLDERS

#### 7-1-433. Closing of transfer books or fixing record date.

(a) For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a bank or trust company may provide that the stock transfer books shall be closed for a stated period not to exceed, in any case, 70 days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting.

(b) In lieu of closing the stock transfer books, the bylaws or, in the absence of an applicable bylaw, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than 70 days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action requiring such determination of shareholders is to be taken.

(c) If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed, or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of stockholders.

(d) When a determination of shareholders entitled to vote at any meeting of shareholders has been made, as provided in this Code section, such determination shall apply to any adjournment thereof, unless the board of directors fixes a new record date under this Code section for the adjourned meeting. (Code 1933, § 41A-2004, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2005, p. 826, § 9/SB 82.)

**The 2005 amendment**, effective May 5, 2005, substituted “70 days” for “50 days” in subsections (a) and (b).

### **7-1-437. Proxies.**

(a) Unless otherwise unlawful, a person or corporation who is entitled to attend a shareholders’ meeting, to vote thereat, or to execute consents, waivers, or releases may be represented at such meeting or vote thereat, and execute consents, waivers, and releases, and exercise any of his or her other rights, by one or more agents, who may be either an individual or individuals or any domestic or foreign corporation, authorized by a written proxy or electronic transmission of proxy executed by such person or by his or her attorney in fact.

(b) No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the person executing it, except as otherwise provided in this Code section.

(c) Subject to the limitation of subsection (b) of this Code section, any proxy duly executed is not revoked and continues in full force and effect until an instrument revoking it, or a duly executed proxy bearing a later date, is received by the secretary of the bank or trust company. A proxy is not revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice of such death or incapacity is received by the secretary of the bank or trust company. Notwithstanding that a valid proxy is outstanding, the powers of the proxyholder are suspended, except in the case of a valid proxy which is by law irrevocable and which states on its face that it is irrevocable, if the maker is present at the meeting and elects to vote in person.

(d) If a proxy for the same shares confers authority upon two or more persons and does not otherwise provide, a majority of them present at the meeting or, if only one is present, then that one may exercise all the powers conferred by the proxy; but, if the proxyholders present at the meeting are divided as to the right and manner of voting in any particular case and there is no majority, the voting of said shares shall be prorated.

(e) If a proxy expressly provides, any proxyholder may, unless otherwise unlawful, appoint in writing a substitute to act in his or her place.

(f) A shareholder shall not sell his or her vote or issue a proxy to vote to any person for any sum of money or anything of value, except as permitted in this Code section and in Code Section 7-1-438, relating to shareholders’ agreements.



(g) To be irrevocable, a proxy must be entitled “IRREVOCABLE PROXY,” must state that it is irrevocable, must not otherwise be unlawful, and must be held by any of the following or by a nominee of any of the following:

(1) A pledge or other person holding a security interest in the shares;

(2) A person who has purchased or agreed to purchase the shares;

(3) A creditor or creditors of the bank or trust company who extend or continue credit to the bank or trust company in consideration of the proxy, if the proxy states that it was given in consideration of such extension or continuation of credit, the amounts thereof, and the name of the person extending or continuing credit;

(4) A person who has contracted to perform services as an officer of the bank or trust company, if a proxy is required by the contract of employment and if the proxy states that it was given in consideration of such contract of employment, the name of the employee, and the period of employment contracted for;

(5) A person designated by or under an agreement under Code Section 7-1-438, relating to shareholders’ agreements.

(h) Notwithstanding a provision in a proxy stating that it is irrevocable, the proxy becomes revocable after the pledge or security interest is redeemed, or the debt of the bank or trust company is paid, or the period of employment provided for in the contract of employment has terminated, or the agreement under Code Section 7-1-438, relating to shareholders’ agreements, has terminated; and, in a case provided for in paragraph (3) or (4) of subsection (g) of this Code section, a proxy becomes revocable three years after the date of the proxy or at the end of the period, if any, specified therein, whichever period is less, unless the period of irrevocability is renewed from time to time by the execution of a new irrevocable proxy as provided in this Code section. This subsection does not affect the duration of a proxy under subsection (b) of this Code section.

(i) A proxy may be revoked, notwithstanding a provision making it irrevocable, by a purchaser of shares without knowledge of the existence of the provision unless the existence of the proxy and its irrevocability are noted conspicuously on the face or back of the certificate representing such shares. (Code 1933, § 41A-2008, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 24; Ga. L. 2007, p. 502, § 3/SB 70; Ga. L. 2010, p. 878, § 7/HB 1387.)

**The 2007 amendment**, effective July 1, 2007, in subsection (a), inserted “or her” twice and inserted “electronic transmission of proxy” near the end.

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted “his or her” for “his” in subsections (e) and (f).

## PART 11

## DIVIDENDS, DISTRIBUTIONS, AND PREFERRED SHARE ACQUISITION

**7-1-460. Restrictions on payment of dividends; limitation of actions for dividends or distributions.**

(a) The board of directors of a bank or trust company may, from time to time, declare and the bank or trust company thereupon shall pay dividends on its outstanding shares in cash, property, or its own shares, except when the bank or trust company is insolvent or when the payment thereof would render the bank or trust company insolvent or when the declaration or payment thereof would be contrary to any restrictions contained in the articles, and subject to the following provisions:

(1) Dividends may be declared and paid in cash or property only out of the retained earnings of the bank or trust company unless otherwise approved in advance by the department on terms consistent with standards of safety and soundness;

(2) Dividends may not be declared or paid at any time that the bank or trust company does not have the paid-in capital and appropriated retained earnings required by Code Section 7-1-411, except the department may approve the payment of dividends by a Subchapter S bank, prior to cumulative profitability, for the sole purpose of providing its shareholders with a source of funds to pay federal and state income taxes on the Subchapter S bank’s income that is taxable to those shareholders;

(3) Dividends may not be paid without the prior approval of the department in excess of specified amounts as may be fixed by regulations of the department to assure that banks and trust companies maintain an adequate capital structure;

(4) Dividends may be declared and paid in lawfully held treasury shares or in authorized but unissued shares, provided that, in the case of a dividend of authorized but previously unissued shares, there shall be transferred to capital stock an amount equal to the aggregate par value of the shares distributed and, after payment of the dividend, the bank or trust company continues to maintain the paid-in capital and appropriated retained earnings required by Code Section 7-1-411; and

(5) No dividends payable in shares of any class shall be paid in respect to shares of any other class unless the articles so provide or

unless such payment is authorized by the affirmative vote or the written consent of the holders of a majority of the outstanding shares of the class in which the payment is to be made.

(b) A split or division of the issued shares of any class into a greater number of shares of the same class without increasing the capital stock of the bank or trust company shall not be construed to be a share dividend within the meaning of this Code section.

(c) If a bank or trust company has declared a cash dividend on any shares or any other distribution payable in cash or has sold fractional shares or scrip for the account of a shareholder and has mailed to a shareholder, at his address appearing on the records of the bank or trust company, a valid check in the amount of the dividend or other distribution or the proceeds of such sale to which such shareholder is entitled and, if such check would have been honored if duly presented to the bank on which it is drawn, no action for the recovery of such dividend or other distribution or for the amount thereof shall be brought by the shareholder or other person entitled thereto more than seven years after the date of mailing the check.

(d) If a bank or trust company has declared a dividend payable in its own shares or any other distribution payable in its own shares or in other than cash and has mailed to a shareholder, at his address appearing on the records of the bank or trust company, a certificate representing such shares or a notice setting forth the time and manner in which a distribution in other than its own shares or cash shall be paid, no action for the recovery of such dividends or other distribution or for the amount thereof shall be brought by the shareholder or other person entitled thereto more than seven years after the mailing of the share certificate or certificates or, in the case of a distribution in other than the shares of the bank or trust company or in cash, the time specified in the notice for the payment thereof.

(e) When the statute of limitations provided for in this Code section has run with respect to any unclaimed dividend, other unclaimed distribution, or unclaimed proceeds of the sale of fractional shares or scrip, the cash or property represented thereby shall thenceforth be treated as an asset of the bank or trust company. (Ga. L. 1919, p. 135, art. 19, §§ 29, 30; Code 1933, §§ 13-2029, 13-2030, 13-2031, 13-2032; Code 1933, § 41A-2101, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2009, p. 86, § 6/HB 141; Ga. L. 2012, p. 795, § 2/HB 945.)

**The 2009 amendment**, effective July 1, 2009, added the exception at the end of paragraph (a)(2).

**The 2012 amendment**, effective July

1, 2012, added “unless otherwise approved in advance by the department on terms consistent with standards of safety and soundness” at the end of paragraph (a)(1).



## PART 12

## MANAGEMENT

**7-1-482. Number, term, and compensation of directors; effect of failure to maintain at least five directors.**

(a) The articles or bylaws of any bank or trust company may fix the number of directors of its policy-making board at not less than five nor more than 25 and may provide that the board may, within such limitation, increase or decrease the number of directors by not more than two in any one year, provided that nothing in this subsection shall require a bank with a board of directors of less than five on July 1, 1972, to increase its board to five members. The failure of a bank or trust company to maintain at least five directors at any time does not exculpate the remaining directors from their obligations and liabilities associated with the actions and decisions made as directors of the financial institution, nor does it in any way void any actions taken or decisions made by the board of directors during any such time that there were less than five directors.

(b) Except as otherwise provided in this chapter, each director shall be elected by the shareholders for a term of one year or for staggered terms as provided in Code Section 14-2-806 and shall serve until he or she resigns, is removed, or becomes disqualified or until his or her successor shall have been duly elected and qualified.

(c) Except as otherwise provided in the articles or bylaws, the board of directors may fix the compensation for directors; and a director may be a salaried officer of the bank or trust company.

(d) Notwithstanding the requirements of this Code section, the board of directors of a bank may appoint one or more nonpolicy-making regional boards of directors to consist of a number of persons to be determined by the board. The members of such regional boards may not set bank policy but may exercise certain powers, duties, and responsibilities as delegated by the board. Such regional board members shall have the same status as nonpolicy-making officers of the bank. All such delegations shall be documented in detail in the minutes of the board. (Ga. L. 1898, p. 78, § 4; Civil Code 1910, § 2818; Ga. L. 1917, p. 62, § 1; Ga. L. 1919, p. 135, art. 19, § 1; Code 1933, §§ 13-2001, 109-103; Ga. L. 1947, p. 476, § 1; Ga. L. 1947, p. 480, § 1; Ga. L. 1966, p. 590, § 6; Code 1933, § 41A-2203, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2000, p. 174, § 10; Ga. L. 2011, p. 518, § 3/HB 239.)

**The 2011 amendment**, effective July 1, 2011, added the second sentence in subsection (a).

## 7-1-490. Responsibility of directors and officers; delegation of investment decisions.

**Law reviews.** — For article, “2013 Georgia Corporation and Business Organization Case Law Developments,” see 19 Ga. St. B.J. 28 (April 2014).

### JUDICIAL DECISIONS

**Judicial notice.** — After the FDIC brought claims against a bank’s former directors and officers for negligence, breach of fiduciary duty, and gross negligence, a court declined to take judicial notice of facts in the FDIC’s Officer of Inspector General’s Audit Report of the Bank and its Congressional testimony that the defendants alleged rebutted allegations that they were negligent or grossly negligent because at the motion to dismiss stage, it was not for the court to weigh those facts against allegations of the complaint and determine, as a matter of law, whether the defendants breached the standard of care required under Georgia law. *FDIC v. Adams*, 2013 U.S. Dist. LEXIS 165232 (N.D. Ga. Apr. 10, 2013).

**Business judgment rule applies.** — FDIC’s claims against former officers and directors of a bank for ordinary negligence and breach of fiduciary duty were subject to the business judgment rule. The FDIC rebutted the business judgment presumption, and its claims could go forward, as the allegations of the complaint, taken together, painted a picture of the officers and directors failing to implement any safeguards and ignoring the ones actually put in place so that they could pursue a rapid growth strategy and accumulate large profits in a short period of time. *FDIC v. Adams*, 2013 U.S. Dist. LEXIS 165232 (N.D. Ga. Apr. 10, 2013).

### PART 14

#### MERGER AND CONSOLIDATION OF STATE BANKS AND TRUST COMPANIES

## 7-1-530. Authority to merge or consolidate; merger, consolidation, or share exchange across state lines; required provisions of the merger plan.

(a) Upon compliance with the requirements of this part and other applicable laws and regulations, including any branching and minimum age laws and regulations, one or more banks or trust companies may merge or consolidate, provided that an institution exercising trust powers alone may merge or consolidate only with another such trust company. Upon compliance with the requirements of this part and other applicable laws and regulations, including any branching and minimum age laws and regulations, a corporation other than a bank or trust company may acquire all of the outstanding shares of one or more classes or series of one or more banks or trust companies through a share exchange.

(b) A corporation other than a bank or trust company may be merged into or consolidated with, or may enter into a share exchange with, a bank or trust company, provided that:

(1) The resulting institution of the merger or consolidation is a bank or trust company;

(2) The resulting institution of the merger or consolidation, or the acquired bank or trust company in a share exchange, holds only assets and liabilities and is engaged only in activities which may be held or engaged in by a bank or trust company; and

(3) The merger, share exchange, or consolidation is not otherwise unlawful.

(c) A merger, share exchange, or consolidation pursuant to subsection (b) of this Code section shall be made by compliance with the requirements of this part. Title 14 shall not be applicable to such a merger, share exchange, or consolidation.

(d) A merger, share exchange, or consolidation across state lines involving one or more banks or trust companies shall also be subject to the provisions of Part 20 of this article.

(e) In the case of a merger of a Georgia state bank with any other bank or banks, with the Georgia bank as the resulting bank, any assets, lines of business, activities, or powers which may accrue to the resulting bank which would not be allowed for a Georgia state bank shall be provided for in the plan of merger. Such plan shall include the proposal for holding or disposal of such assets or the continuation or termination of such line of business, activity, or power. The department shall review the plan to determine whether, in the interest of safety and soundness and consistent with the other objectives of Code Section 7-1-3, the activity, power, asset, or line of business should be approved, denied, or phased out within a reasonable period of time, to be determined by the department.

(f) As used in this part, the term “share exchange” means a plan of exchange of all of the outstanding shares of one or more classes or series of shares in accordance with this part.

(g) Subject to the provisions of this part, this Code section does not limit the power of a corporation other than a bank or trust company to acquire all or part of the shares of one or more classes or series of a bank or trust company through a voluntary exchange of shares or otherwise. (Ga. L. 1919, p. 135, art. 13, § 1; Code 1933, § 13-1401; Ga. L. 1973, p. 278, § 1; Code 1933, § 41A-2401, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1996, p. 848, § 8; Ga. L. 1997, p. 485, § 17; Ga. L. 2000, p. 174, § 11; Ga. L. 2001, p. 970, § 5; Ga. L. 2003, p. 843, § 6; Ga. L. 2007, p. 502, § 4/SB 70.)

**The 2007 amendment**, effective July 1, 2007, in subsection (a), added the last sentence; in subsection (b), inserted “, or may enter into a share exchange with,” near the beginning of the introductory paragraph, inserted “of the merger or con-



solidation" in the middle of paragraph (b)(1), inserted "of the merger or consolidation, or the acquired bank or trust company in a share exchange," near the beginning of paragraph (b)(2), and inserted "share exchange," in paragraph (b)(3); in-

serted "share exchange," twice in subsection (c); in subsection (d), inserted "share exchange," and substituted "involving" for "of any"; and added subsections (f) and (g).

**7-1-531. Requirements for merger, share exchange, or consolidation plan; modification of plan.**

(a) The requirements for a merger, share exchange, or consolidation which must be satisfied by the parties thereto are as follows:

(1) The parties shall adopt a plan stating the method, terms, and conditions of the merger, share exchange, or consolidation, including the rights under the plan of the shareholders of each of the parties and any agreement concerning the merger, share exchange, or consolidation. Said plan shall specify:

(A) The name that such bank or trust company shall have upon and after such merger, share exchange, or consolidation, which may be the name of any one of the institutions or the combined names of two or more of the institutions or such other name as stated;

(B) The persons who shall constitute the board of directors of the bank or trust company after the merger, share exchange, or consolidation;

(C) In the case of a merger or consolidation, the manner and basis of converting the shares of each merged or consolidated institution into shares or other securities or obligations of the surviving bank or trust company and, if any shares of any of the merged or consolidated institutions are not to be converted solely into shares or other securities of the surviving bank or trust company, the amount of cash or securities of any other corporation, or combination of cash and such securities, which is to be paid or delivered to the holders of such shares in exchange for or upon the surrender of such shares, which cash or securities may be in addition to or in lieu of the shares or other securities of the surviving bank or trust company;

(D) In the case of a share exchange, the terms and conditions of the share exchange and the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or in part; and

(E) Such other provisions with respect to the proposed merger or consolidation as are deemed desirable.

(2) Adoption of the plan by each party thereto shall require the affirmative vote of at least:

(A) A majority of the directors; and

(B) The shareholders entitled to cast two-thirds of the votes which all shareholders are entitled to cast thereon and, if any class of shares is entitled to vote thereon as a class, the holders of at least two-thirds of the outstanding shares of such class, at a meeting of shareholders.

(3) The notice shall include a copy or summary of the plan and a full statement of the rights and remedies of dissenting shareholders, the method of exercising them, and the limitations on such rights and remedies.

(b) Any modification of a plan which has been adopted shall be made by any method provided therein or, in the absence of such provision, by the same vote as that required for adoption. (Ga. L. 1919, p. 135, art. 13, §§ 1, 2; Code 1933, §§ 13-1401, 13-1402; Ga. L. 1973, p. 278, § 1; Code 1933, § 41A-2402, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2007, p. 502, § 5/SB 70.)

**The 2007 amendment**, effective July 1, 2007, in subsection (a), inserted “, share exchange,” throughout the subsection, in subparagraph (a)(1)(C), substituted “In the case of a merger or consolidation, the”

for “The” at the beginning and deleted “and” from the end, added subparagraph (a)(1)(D), and redesignated former subparagraph (a)(1)(D) as subparagraph (a)(1)(E).

**7-1-532. Execution, contents, and filing of articles of merger, share exchange, or consolidation; notice; filing amendment.**

(a) Upon adoption of the plan of merger, share exchange, or consolidation as provided in Code Section 7-1-531, the parties to the merger, share exchange, or consolidation shall file in duplicate with the department articles of a merger, share exchange, or consolidation as required by this Code section, together with the fee required by Code Section 7-1-862.

(b) The articles of merger, share exchange, or consolidation shall be signed by two duly authorized officers of each party to the plan under their respective seals and shall contain:

(1) The names of the parties to the plan and of the resulting bank or trust company or the acquiring corporation in a share exchange;

(2) The street address and county of the location of the main office and registered agent and registered office of each;

(3) The votes by which the plan was adopted and the time, place, and notice of each meeting in connection with such adoption;

(4) The names and addresses of the first directors of the resulting bank or trust company or the directors of the acquired corporation in a share exchange;

(5) In the case of a merger, any amendment of the articles of the resulting bank or trust company;

(6) In the case of a consolidation, the provisions required in articles of a new bank or trust company by paragraphs (4), (5), (6), (7), and (10) of subsection (a) of Code Section 7-1-392; and

(7) The plan.

(c) Together with the articles of merger, share exchange, or consolidation, the parties shall deliver to the department a copy of the notice of merger, share exchange, or consolidation and an undertaking, which may appear in the articles of merger, share exchange, or consolidation or be set forth in a letter or other instrument executed by an officer or any person authorized to act on behalf of such bank or trust company, that the request for publication of a notice of filing the articles of merger, share exchange, or consolidation and payment therefor will be made as required by subsection (d) of this Code section.

(d) No later than the next business day after filing the articles of merger, share exchange, or consolidation with the department, the parties shall mail or deliver to the publisher of a newspaper which is the official organ of the county where the main office of each party is located a notice which shall contain a statement that the articles of merger, share exchange, or consolidation have been filed with the department, the names of the institutions which are parties to the proposed merger, share exchange, or consolidation, and in the case of a merger the proposed name of the surviving bank or trust company, and shall designate a place where a copy of the articles of merger, share exchange, or consolidation may be examined. Subsections (b) and (c) of Code Section 7-1-7 shall also apply to the notice.

(e) The request for publication of the notice shall be accompanied by a check, draft, or money order in the proper amount in payment of the cost of publication. The notice shall be published once a week for two consecutive weeks commencing within ten days after receipt of the notice by the newspaper.

(f) In the event the plan is amended as provided in Code Section 7-1-531, the parties shall promptly file in duplicate with the department an amendment to the articles of consolidation, share exchange, or merger reflecting such amendment of the plan. (Ga. L. 1922, p. 63, § 1; Code 1933, § 13-1403; Ga. L. 1972, p. 727, § 7; Code 1933, § 41A-2403, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 12; Ga. L. 1995, p. 673, § 19; Ga. L. 1998, p. 795, § 24; Ga. L. 1999, p. 81, § 7; Ga. L. 1999, p. 674, § 12; Ga. L. 2007, p. 502, § 6/SB 70.)



**The 2007 amendment**, effective July 1, 2007, inserted “, share exchange,” throughout this Code section; in paragraph (b)(1), added “or the acquiring corporation in a share exchange” to the end; in paragraph (b)(4), added “or the direc-

tors of the acquired corporation in a share exchange” to the end; and, near the end of the first sentence in subsection (d), inserted “in the case of a merger” and inserted the comma following “surviving bank or trust company”.

### **7-1-533. Additional filings with department.**

The parties to the plan shall also file with the department:

(1) An application and information desired by the department in order to evaluate the proposed merger, share exchange, or consolidation, which shall be made available in the form specified by the department;

(2) Applicable fees established by regulation of the department to defray the expenses of the investigation required by Code Section 7-1-534; and

(3) If the merger, share exchange, or consolidation involves the adoption of a new name, a certificate of the Secretary of State reserving said name under Code Section 7-1-131. (Ga. L. 1919, p. 135, art. 13, §§ 2, 3; Code 1933, § 13-1404; Code 1933, § 41A-2404, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1978, p. 1717, § 6; Ga. L. 1989, p. 1257, § 13; Ga. L. 1995, p. 673, § 20; Ga. L. 2007, p. 502, § 7/SB 70.)

**The 2007 amendment**, effective July 1, 2007, inserted “, share exchange,” twice in this Code section.

### **7-1-534. Approval or disapproval by department.**

(a) Upon receipt of the articles of consolidation, share exchange, or merger and the filings required by Code Section 7-1-533, the department shall conduct such investigation as it may deem necessary to ascertain whether:

(1) The articles of merger, share exchange, or consolidation and supporting items satisfy the requirements of this chapter;

(2) The plan and any modification thereof adequately protect the interests of depositors, other creditors, and shareholders;

(3) The requirements for a merger, share exchange, or consolidation under all applicable laws have been satisfied and the resulting bank or trust company or the acquired bank or trust company in a share exchange would satisfy the requirements of this chapter applicable to it; and

(4) The merger, share exchange, or consolidation would be consistent with adequate and sound banking or fiduciary practice and in the public interest on the basis of:

- (A) The financial history and condition of the parties to the plan;
- (B) Their prospects;
- (C) The character of their management; and
- (D) The convenience and needs of the area primarily to be served by the resulting institution, or by the acquiring corporation and the acquired bank or trust company in a share exchange.

(b) Within 90 days after receipt of the articles of merger, share exchange, or consolidation, the notice of merger or share exchange, and the filings required by Code Section 7-1-533, or within an additional period of not more than 30 days after an amendment to the application is received within the initial 90 day period, the department shall, in its discretion, approve or disapprove the articles on the basis of its investigation and the criteria set forth in subsection (a) of this Code section. Except as provided in Code Section 7-1-535, the department shall give the Secretary of State written notice of its approval with a copy of the articles of merger, share exchange, or consolidation and a copy of the notice of merger or share exchange attached. The department shall also give the parties to the plan written notice of its decision and, in the event of disapproval, a statement in general of the reasons for its decision. The decision of the department shall be conclusive, except that it may be subject to judicial review as provided in Code Section 7-1-90. (Code 1933, § 41A-2405, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 14; Ga. L. 1995, p. 673, § 21; Ga. L. 1996, p. 6, § 7; Ga. L. 2007, p. 502, § 8/SB 70.)

**The 2007 amendment**, effective July 1, 2007, inserted “, share exchange,” throughout this Code section; inserted “or the acquired bank or trust company in a share exchange” near the end of para-

graph (a)(3); and added “, or by the acquiring corporation and the acquired bank or trust company in a share exchange” to the end of subparagraph (a)(4)(D).

**7-1-535. Procedure after approval by department; federal approval or disapproval; issuance of certificate of merger, share exchange, or consolidation.**

(a) If the laws of the United States require the approval of the merger, share exchange, or consolidation by any federal agency, the department may, at its option, after its approval, retain its notice to the Secretary of State until it receives notice of the decision of such agency. If such agency shall refuse to give its approval, the department may, at its option, notify the parties to the plan that the department’s approval has been rescinded for that reason. If such agency gives its approval,

the department shall deliver its written approval to the Secretary of State for issuance of a certificate of merger, share exchange, or consolidation by the Secretary of State and shall notify the parties to the plan.

(b) If all the taxes, fees, and charges required by law shall have been paid and if the name of the resulting bank or trust company in a merger or consolidation continues to be reserved or is available on the records of the Secretary of State, upon receipt of the written approval of the department, the Secretary of State shall issue to the resulting bank or trust company or the acquiring corporation in a share exchange a certificate of merger, share exchange, or consolidation with the approved articles of merger or consolidation attached thereto and shall retain a copy of such certificate, articles, and approval by the department. (Ga. L. 1922, p. 63, § 1; Code 1933, § 13-1403; Ga. L. 1972, p. 727, § 7; Code 1933, § 41A-2406, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1978, p. 1717, § 7; Ga. L. 2007, p. 502, § 9/SB 70.)

**The 2007 amendment**, effective July 1, 2007, inserted “, share exchange,” throughout this Code section; and, in subsection (b), inserted “in a merger or con-

solidation” near the beginning and inserted “or the acquiring corporation in a share exchange” near the middle.

### **7-1-536. Effect of merger, share exchange, or consolidation.**

(a) As of the issuance of the certificate of merger, share exchange, or consolidation by the Secretary of State, the merger, share exchange, or consolidation shall be effective.

(b) The certificate of merger, share exchange, or consolidation shall be conclusive evidence of the performance of all conditions precedent to the merger, share exchange, or consolidation and of the existence or creation of the bank or trust institution, except as against the state.

(c) When a merger or consolidation becomes effective, each party to the plan, except the resulting bank or trust company, shall cease to exist as a separate entity but shall continue in, and the parties to the plan shall be, a single corporation which shall be the bank or trust company and which shall have, without further act or deed, all the property, rights, powers, trusts, duties, and obligations of each party to the plan. When a share exchange becomes effective, the shares of each acquired bank or trust company are exchanged as provided in the plan, and the former holders of the shares are entitled only to the share exchange rights provided in the plan of share exchange or to their rights under Code Section 7-1-537.

(d) The articles of the resulting bank or trust company shall be, in the case of a merger, the same as its articles prior to the merger with any change stated in the articles of merger or, in the case of a consolidation, the provisions stated in the articles of consolidation.



(e) The resulting bank or trust company, or the acquired bank or trust company in a share exchange, shall have the authority to engage only in such business and exercise only such powers as are then permissible upon original incorporation under this chapter and shall be subject to the same prohibitions and limitations as it would then be subject to upon original incorporation. It may, however, subject to permission of the department as set out in Code Sections 7-1-530 and 7-1-555, engage in any business and exercise any right that any bank or trust company which is a party to the plan could lawfully exercise or engage in immediately prior to the merger, share exchange, or consolidation.

(f) No liability of any party to the plan or of its shareholders, directors, or officers shall be affected nor shall any lien on any property of a party to the plan be impaired by the merger, share exchange, or consolidation. Any claim existing or action pending by or against any party to the plan may be prosecuted to judgment as if the merger, share exchange, or consolidation had not taken place or the resulting bank or trust company may be substituted in its place. (Ga. L. 1919, p. 135, art. 13, § 5; Code 1933, §§ 13-1406, 13-1407; Code 1933, § 41A-2407, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2001, p. 970, § 6; Ga. L. 2007, p. 502, § 10/SB 70.)

**The 2007 amendment**, effective July 1, 2007, inserted “, share exchange,” throughout this Code section; added the last sentence in subsection (c); and in-

serted “, or the acquired bank or trust company in a share exchange,” near the beginning of subsection (e).

## JUDICIAL DECISIONS

**Name of corporate bank defendant in legal proceeding.** — In a suit brought by mortgagors against the mortgagor bank that was taken over by a successor bank, the appellate court erred in dismissing the successor bank’s appeal under O.C.G.A. § 9-11-25 for lack of standing based on the trial court’s failure to add or

substitute it as the defendant because the two corporations were deemed the same entity under federal and state law by virtue of their merger, thus, the claims originally filed by and against the mortgagee bank could continue. *Nat’l City Mortg. Co. v. Tidwell*, 293 Ga. 697, 749 S.E.2d 730 (2013).

## 7-1-537. Rights of dissenting shareholders; surrender of certificates.

(a) A shareholder of a bank or trust company which is a party to a plan of proposed merger, share exchange, or consolidation under this part who objects to the plan shall be entitled to the rights and remedies of a dissenting shareholder as determined under Chapter 2 of Title 14, known as the “Georgia Business Corporation Code.”

(b) The bank or trust company into which the other or others have been merged or consolidated, or the acquiring corporation in a share

exchange, as the case may be, shall have the right to require the return of the original certificates of stock held by each shareholder in each or either of the institutions and in lieu thereof:

(1) To issue to each shareholder new certificates for such number of shares of the institution into which the others shall have been merged or consolidated or of the acquiring corporation in a share exchange; or

(2) To cause to be paid or delivered to each shareholder the amount of cash or securities of any other corporation or combination of cash and such securities as, under the plan of merger, share exchange, or consolidation, the said shareholder may be entitled to receive. (Ga. L. 1919, p. 135, art. 13, §§ 4, 6; Code 1933, § 13-1405; Ga. L. 1973, p. 278, § 2; Code 1933, § 41A-2408, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 946, § 68; Ga. L. 1989, p. 1257, § 15; Ga. L. 2007, p. 502, § 11/SB 70.)

**The 2007 amendment**, effective July 1, 2007, inserted “, share exchange,” twice in this Code section; in subsection (b), inserted “or the acquiring corporation in a share exchange,” near the beginning of the introductory paragraph; and inserted “or of the acquiring corporation in a share exchange” at the end of paragraph (b)(1).

## PART 15

### CONVERSIONS, MERGERS, AND CONSOLIDATIONS INVOLVING NATIONAL BANKS

#### **7-1-550. Authority for national bank or federal savings bank to state bank or trust company conversions, mergers, and consolidations; conversion, merger, or consolidation across state lines; conversion of federal savings bank to state bank.**

(a) Subject to this part and any applicable branching law or regulation, a national bank located in this state may convert into, or merge or consolidate with, a bank or trust company upon:

(1) Compliance with the applicable laws of the United States, including any provisions thereof relating to approval of said conversion, merger, or consolidation by the shareholders and directors of the national bank and to dissenting rights of shareholders in such national bank, and compliance with any other requirements prescribed by the department to protect the shareholders or members or the safety and soundness of the institution;

(2) Adoption of any plan of merger or consolidation by the directors and shareholders of any party thereto existing under the laws of this state as required by paragraph (2) of subsection (a) of Code Section 7-1-531;

(3) Approval of the conversion, merger, or consolidation by the department as provided in this part; and

(4) Issuance of the appropriate certificate by the Secretary of State as provided in this part.

(b) A conversion, merger, or consolidation across state lines of any one or more national banks with a bank or trust company shall also be subject to the provisions of Part 20 of this article.

(c) A federal savings bank located in this state may apply to the department to convert to a state charter. The provisions of Code Section 7-1-293 shall apply to the resulting bank, and the conversion procedure shall be the same as for national bank conversions. (Ga. L. 1953, Jan.-Feb. Sess., p. 73, §§ 3, 4; Code 1933, § 41A-2501, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1982, p. 3, § 7; Ga. L. 1996, p. 848, § 9; Ga. L. 1997, p. 485, § 18; Ga. L. 1999, p. 674, § 13; Ga. L. 2005, p. 826, § 10/SB 82.)

**The 2005 amendment**, effective May 5, 2005, added the language beginning “, and compliance with” at the end of paragraph (a)(1).

### **7-1-557. Merger, consolidation, or share exchange of nonbank corporations into national banks.**

A national bank located in this state may merge or consolidate with, or enter into a share exchange with, a corporation other than a bank or trust company, provided that:

(1) Such merger, share exchange, or consolidation is permitted by the laws of the United States and such laws are complied with;

(2) The laws governing the merger, share exchange, or consolidation of such corporation are complied with;

(3) The resulting institution of the merger or consolidation, or the acquired bank in a share exchange, is a national bank;

(4) The resulting institution of the merger or consolidation, or the acquired bank in a share exchange, holds only assets and liabilities and engages only in activities which may be held or engaged in by a national bank located in this state; and

(5) The merger, share exchange, or consolidation is not otherwise unlawful. (Code 1933, § 41A-2508, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2007, p. 502, § 12/SB 70.)

**The 2007 amendment**, effective July 1, 2007, inserted “, share exchange,” throughout this Code section; inserted “, or enter into a share exchange with,” in the middle of the introductory paragraph; and inserted “of the merger or consolida-



tion, or the acquired bank in a share exchange," near the beginning of paragraphs (3) and (4).

## PART 18

### BANK BRANCHES, OFFICES, FACILITIES, AND HOLDING COMPANIES

#### **7-1-601. Branch offices.**

(a) Branch offices may be established by banks doing a lawful banking business in Georgia with the prior approval of the department as follows:

(1) New or additional branch offices may be established de novo in the manner provided in Code Section 7-1-602;

(2) New or additional branch offices may be established through merger, share exchange, consolidation, or sale of assets pursuant to Part 14, 15, 16, 19, or 20 of this article;

(3) A bank may acquire a branch office from another bank without acquisition of the entire bank. However, an out-of-state bank with no lawfully established branch office in Georgia may not directly or indirectly make such an acquisition; or

(4) A bank with two or more existing banking offices in Georgia may redesignate its existing main office as a branch office in accordance with the procedures established by the department.

(b) A bank not doing a lawful banking business in Georgia may become the owner of a branch office in Georgia provided such transaction is consummated under Section 12 or 13 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1811, et seq., as amended.

(c) Taxation of all banks shall be in the manner provided in Chapter 6 of Title 48.

(d) Each branch office will operate under the control and direction of the board of directors and executive officers of the bank, and the bank shall be responsible for adequately staffing the branch office to conduct the business of the branch office in accordance with this chapter, federal law, and the rules and regulations of the department. (Ga. L. 1919, p. 135, art. 1, § 3; Ga. L. 1920, p. 102, § 1; Ga. L. 1927, p. 195, § 1; Code 1933, § 13-203; Ga. L. 1960, p. 67, § 4; Ga. L. 1970, p. 954, § 3; Ga. L. 1975, p. 474, § 1; Ga. L. 1978, p. 1710, § 1; Ga. L. 1987, p. 1586, § 9; Ga. L. 1996, p. 181, § 9; Ga. L. 1996, p. 642, §§ 1, 2; Ga. L. 1996, p. 848, § 10; Ga. L. 1999, p. 674, § 17; Ga. L. 2007, p. 502, § 13/SB 70.)

The 2007 amendment, effective July 1, 2007, inserted "share exchange," in paragraph (a)(2).

**7-1-606. Bank holding companies — Actions unlawful without prior approval of commissioner; exceptions.**

(a)(1) On and after July 1, 1976, it shall be unlawful, except with the prior approval of the commissioner:

(A) For any action to be taken that causes any company to become a bank holding company;

(B) For any action to be taken that causes a bank to become a subsidiary of a bank holding company;

(C) For any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control 5 percent or more of the voting shares of such bank;

(D) For any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank;

(E) For any bank holding company to merge or consolidate with, or enter into a share exchange with, any other bank holding company; or

(F) For any bank holding company to take any action which would violate the federal Bank Holding Company Act of 1956, as amended.

(2) Notwithstanding paragraph (1) of this subsection, this prohibition shall not apply to:

(A) Shares acquired by a bank:

(i) In good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in paragraph (2) of subsection (b) of Code Section 7-1-605 and except as provided in paragraphs (2) and (3) of subsection (c) of Code Section 7-1-605; or

(ii) In the regular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after July 1, 1976, in securing or collecting any such previously contracted debt shall be disposed of within a period of two years from the date on which they were acquired;

(B) Additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition; or

(C) Transactions for which the department has established by rule, regulation, or written policy a streamlined or alternative procedure, if such procedure specifically dispenses with the need for approval by the commissioner.

For the purpose of this paragraph, bank shares acquired after July 1, 1976, shall not be deemed to have been acquired in good faith in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto; but, in such instances, acquisitions may be made without prior approval of the commissioner if the commissioner, upon application filed within 90 days after the shares are acquired, approves retention or, if retention is disapproved, the acquiring bank disposes of the shares or its sole discretionary voting rights within two years after issuance of the order of disapproval.

(b)(1) The commissioner shall not approve nor shall any other procedure authorize:

(A) Any acquisition or merger or share exchange or consolidation under this Code section which would result in a monopoly or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the State of Georgia; or

(B) Any other proposed acquisition or merger or share exchange or consolidation under this Code section whose effect in any section of the state may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

(2) In every case, the department shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned and the convenience and needs of the community to be served.

(c) Nothing contained in this Code section shall affect the obligation of any person or company to comply with the provisions of any order of any court or of the commissioner entered prior to July 1, 1976.

(d) The commissioner shall not grant any such contemplated approval until he or she shall first cause reasonable public notice of the proposed action to be given in the area to be affected and until he or she shall first afford to the public an opportunity to submit, for the commissioner's consideration, information, objections, and opinions as to the proposed action and its effect. The notice requirement may not



apply in the case of a streamlined procedure where the holding company meets certain qualifying criteria established by rule, regulation, or written policy of the department.

(e) Notwithstanding any other provisions of this part, a bank holding company which lawfully controls a bank or has received the requisite approvals under this Code section to acquire control of a bank may, with the approval of the commissioner, or as otherwise provided in this chapter or by departmental rule or regulation, either at the time such control is obtained or at any time thereafter, merge or consolidate such bank with another of such bank holding company's banking subsidiaries or have another of such bank holding company's banking subsidiaries acquire all or substantially all of the assets of such bank and consequently operate as a branch office of such other banking subsidiary. Nothing in this subsection shall be deemed to supersede, rescind, or modify any provision, requirement, or condition of this Code section which would otherwise be applicable to any acquisition of a banking subsidiary by a bank holding company under this Code section, nor shall it be deemed to supersede, rescind, or modify any provision, requirement, or condition of Part 14, 15, 16, 19, or 20 of this article which would otherwise be applicable to the merger of banks or the acquisition or sale of all or substantially all of the assets of a bank. (Code 1933, § 13-207.1, enacted by Ga. L. 1976, p. 168, § 3; Ga. L. 1980, p. 542, § 1; Ga. L. 1985, p. 1506, § 1; Ga. L. 1997, p. 143, § 7; Ga. L. 1998, p. 795, § 27; Ga. L. 1999, p. 674, § 17; Ga. L. 2007, p. 502, § 14/SB 70.)

**The 2007 amendment**, effective July 1, 2007, inserted “, or enter into a share exchange with,” in the middle of subpara-

graph (a)(1)(E) and inserted “or share exchange” near the beginning of subparagraphs (b)(1)(A) and (b)(1)(B).

### **7-1-608. Bank holding companies — Lawful and unlawful acquisitions, formations, and mergers.**

(a) It shall be unlawful for a bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank, including any federal savings and loan association or federal savings bank, if, after such acquisition, such bank holding company will directly or indirectly own or control 5 percent or more of the voting shares of such bank, or for any company to become a bank holding company as a result of the acquisition of control of such bank, unless:

(1) The bank being acquired is either a “bank” for the purposes of the federal Bank Holding Company Act of 1956, as amended (12 U.S.C. Section 1841), or a “savings and loan,” a “state savings and loan,” a “savings bank,” or a “federal savings bank” whose deposits are insured under a federal deposit insurance program; and

(2) Such bank of the type described in paragraph (1) of this subsection has been in existence and continuously operating or incorporated as a bank for a period of three years or more prior to the date of acquisition.

(b) Notwithstanding the provisions of this Code section, the following activities are permitted. These activities regarding acquisitions by purchase and by formation are to be considered exceptions to the three-year age requirement contained in paragraph (2) of subsection (a) of this Code section:

(1) A bank holding company may acquire all or substantially all of the shares of a bank or trust company organized solely for the purpose of facilitating the acquisition of a federal or state chartered bank, savings and loan association, savings bank, building and loan association, or other corporation doing a banking business in this state or the trust department of such institutions, which has been in existence and continuously operating or incorporated as such an institution or exercising trust powers for the minimum period prescribed in subsection (a) of this Code section;

(2) A company may become a bank holding company by virtue of acquiring control of a bank if neither the company nor any other company controlled by or controlling such company controls any other bank domiciled in this state or elsewhere;

(3) A bank holding company registered with the department and lawfully owning a bank or a branch of a bank which was formed by the acquisition and subsequent merger of or share exchange with a Georgia bank, which bank or branch does a lawful banking business in this state, may acquire control through formation of a de novo bank in Georgia, provided that departmental approval and any required federal approvals are obtained. No out-of-state bank holding company may enter Georgia to do a banking business by formation of a de novo bank; and

(4) A de novo bank established or formed pursuant to paragraph (3) of this subsection shall be subject to the three-year age requirement contained in paragraph (2) of subsection (a) of this Code section. A bank holding company may, however, merge or consolidate a de novo bank which may be less than three years old and that is established pursuant to paragraph (3) of this subsection into another bank owned by that holding company.

(c) The department may waive the application of the three-year age requirement in the case of a bank that has been found by federal or state regulators to be:

(1) Insolvent or in an unsafe or unsound condition to transact its business;

(2) In a condition where it has generally suspended payment of its obligations without authority of law; or

(3) Under any plan, order, or agreement of any kind with the FDIC under Section 12, 13, or 38 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1811, et seq., as amended. (Code 1933, § 13-207.3, enacted by Ga. L. 1976, p. 168, § 5; Ga. L. 1980, p. 1081, § 1; Ga. L. 1981, p. 1008, § 1; Ga. L. 1983, p. 602, § 15; Ga. L. 1985, p. 246, § 2; Ga. L. 1987, p. 1586, § 10; Ga. L. 1993, p. 917, § 5; Ga. L. 1996, p. 848, § 11; Ga. L. 1997, p. 143, § 7; Ga. L. 1999, p. 674, § 17; Ga. L. 2000, p. 174, § 14; Ga. L. 2002, p. 670, § 1; Ga. L. 2007, p. 502, § 15/SB 70.)

**The 2007 amendment**, effective July 1, 2007, inserted “or share exchange with” in the middle of the first sentence of paragraph (b)(3).

## ARTICLE 3

### CREDIT UNIONS

#### PART 1

#### GENERAL PROVISIONS; ORGANIZATION

#### **7-1-630. Initial subscribers; contents and filing of articles; other required filings; fee for investigation; selection of initial directors.**

(a) Any number of persons, not less than eight, having a common bond, as defined in subsection (b) of this Code section, may incorporate for the purpose of organizing a credit union in accordance with this article. The persons so desiring to become incorporated shall execute articles which shall set forth the following:

- (1) The name of the proposed credit union;
- (2) The territory in which it will operate;
- (3) The location where its initial registered office will be located;
- (4) The names and addresses of the subscribers, their occupation, length of service, and that each has subscribed to one share and paid for same;
- (5) The names and addresses of the original directors;
- (6) The proposed field of membership specified in detail and having the same common bond as the subscribers;
- (7) That the purpose and nature of the business are to conduct a credit union with the rights and powers granted by this article; and



(8) The term of the existence of the credit union, which shall be perpetual unless otherwise limited.

(b) For purposes of this article, “common bond” is described as that specific relationship of occupation, association, or interest; residence within a well-defined neighborhood, community, or rural district; employees of a common employer; or members of a bona fide cooperative, educational, fraternal, professional, religious, rural, or similar organization which tends to create a mutual interest between persons sharing the relationship. Persons related by blood, adoption, or marriage to or living in the same household with a person within such common bond and the surviving spouses of deceased members shall also be considered within the common bond.

(c) The subscribers shall file the articles in triplicate with the department together with the fee specified in Code Section 7-1-862. The department shall certify one copy of the articles and return it to the subscribers.

(d) The subscriber shall file with the department a certificate from the Secretary of State attesting that the name of the proposed credit union has been reserved as authorized by Code Section 7-1-131.

(e) The subscriber shall file with the department two copies of proposed bylaws setting forth the following:

(1) The date of the annual meeting, the manner of conducting the same, the number of members constituting a quorum and regulations as to voting, and the manner of notification of the meeting, which shall comply with Code Section 7-1-6, except that, if the credit union maintains an office and the board of directors so determines, notice of the annual meeting or of any special meeting may be given by posting such notice in a conspicuous place in the office of the credit union at least ten days prior to such meeting;

(2) The number of directors, which must be not less than five, all of whom must be members, and their powers and duties, together with the duties of the officers elected by the board of directors;

(3) The qualifications for membership of those coming within the initial common bond as required by this article;

(4) The conditions under which shares may be issued, paid for, transferred, and withdrawn; deposits received and withdrawn; loans made and repaid; and funds otherwise invested; and

(5) The charges which shall be made, if any, for failure to meet obligations punctually; whether or not the credit union shall have the power to borrow; the method of receipting for money; the manner of accumulating a reserve; the manner of determining and paying

interest and dividends; and such other matters consistent with this article as may be requisite to the organization and operation of the proposed credit union.

(f) The subscriber shall pay such fee as shall be established by regulation of the department to defray the cost of the investigation required by Code Section 7-1-632, provided that the department shall not be required to set such fee if in its judgment the fee would discourage the organization of credit unions under this article.

(g) The subscriber shall select at least five qualified persons who agree to serve on the board of directors. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, shall be executed by those who so agree and filed with the department along with the proposed bylaws. (Ga. L. 1925, p. 165, § 1; Code 1933, § 25-101; Code 1933, § 41A-3001, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1244, § 1; Ga. L. 1989, p. 1257, § 19; Ga. L. 2005, p. 826, § 11/SB 82.)

**The 2005 amendment**, effective May 5, 2005, added subsections (d) through (g).

#### **7-1-631. Additional filings with department.**

Reserved. Repealed by Ga. L. 2005, p. 826, § 12, effective May 5, 2005.

**Editor's notes.** — This Code section 1974, p. 705, § 1; Ga. L. 1981, p. 1244, was based on Ga. L. 1925, p. 165, § 2; § 2; Ga. L. 1989, p. 1211, § 11. Code 1933, § 41A-3002, enacted by Ga. L.

#### **7-1-632. Approval or disapproval by department; certificate of incorporation.**

(a) The department shall make an appropriate investigation of the articles and bylaws for the purpose of determining:

(1) Whether the articles and bylaws conform to this article;

(2) The general character and qualifications of the subscribers and the financial stability and future prospects of the sponsoring company, if any;

(3) The economic advisability of establishing the proposed credit union and such other facts and circumstances bearing on the proposed credit union as in the opinion of the department may be relevant;

(4) That a common bond exists in accordance with Code Section 7-1-630; and

(5) That the subscribers and person or corporation sponsoring the credit union are in agreement as to the services, if any, that the sponsor will provide.

(b) If the department determines to its satisfaction that the proposed credit union meets the criteria set forth above, it shall, within 90 days from receipt of the articles and in compliance with Code Section 7-1-630, send a copy of the articles and written approval of the articles to the Secretary of State after making such changes in the articles or bylaws consistent with this article and with the consent of the subscribers that it deems appropriate. Such approval shall indicate any changes made to the articles including changes from the proposed field of membership. If the department shall disapprove the articles, the procedures of subsection (b) of Code Section 7-1-635 shall be followed.

(c) Upon receipt of the approval of the department, the Secretary of State shall thereupon issue a certificate attesting to the incorporation of the credit union. The credit union shall, however, confine itself to organizational activities until it receives a permit to do business. (Ga. L. 1925, p. 165, § 3; Code 1933, § 25-103; Code 1933, § 41A-3003, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1983, p. 602, § 17; Ga. L. 1989, p. 1257, § 20; Ga. L. 2005, p. 826, § 13/SB 82.)

**The 2005 amendment**, effective May 7-1-630” for “Code Section 7-1-631” in subsection (b), 2005, substituted “Code Section section (b).

#### **7-1-634. Amendment of articles and bylaws; fee for investigation; approval or denial by department.**

(a) Amendments to the bylaws of a credit union may be adopted and amendments of the articles may be requested by the affirmative vote of two-thirds of the authorized number of members of the board of directors at any duly held meeting thereof if the members of the board have been given prior written notice of said meeting and the notice has contained a copy of the proposed amendment or amendments. No amendment of the bylaws or of the articles shall become effective until approved in writing by the department.

(b) Every proposed amendment of the articles shall be filed in triplicate with the department together with the fee specified in Code Section 7-1-862. Proposed amendments of the bylaws shall be filed with the department.

(c) The credit union may amend its bylaws to change its field of membership by adding additional groups of persons subject to the following conditions:

(1) Each new group must have a common bond that meets one of the descriptions in subsection (b) of Code Section 7-1-630; and



(2) The credit union must pay such fee as may be established by the department to defray the cost of investigation.

(d) The department shall grant or deny approval of a complete and accepted application to amend the bylaws within 90 days, subject to safety and soundness and other criteria established by the department for these applications.

(e) The department shall maintain a permanent record of any approved amendment to the bylaws of a credit union which changes the field of membership proposed in the original articles or as subsequently amended. (Ga. L. 1925, p. 165, §§ 6, 11; Code 1933, §§ 25-104, 25-121; Ga. L. 1967, p. 595, § 3; Code 1933, § 41A-3005, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1976, p. 1681, § 2; Ga. L. 1983, p. 602, § 18; Ga. L. 1989, p. 1257, § 21; Ga. L. 1995, p. 673, § 25; Ga. L. 2005, p. 826, § 14/SB 82.)

**The 2005 amendment**, effective May 5, 2005, redesignated former subsection (c) as present subsection (e); and added subsections (c) and (d).

### 7-1-635. Procedures for department.

(a) The department shall, in its discretion, approve or disapprove of proposed amendments to the articles or to the bylaws within 90 days after they are submitted by the credit union and within that time shall so advise the Secretary of State of any changes to the articles and inform the credit union in writing of its approval or disapproval.

(b) If the department should disapprove any articles or proposed amendments to articles or bylaws, it shall state the reasons for its disapproval. The subscribers or credit union shall have reasonable time, not more than 90 days from the date of disapproval or such additional time as the department may allow, to correct any matters causing its disapproval. If such matter is corrected, the department shall then advise the Secretary of State and credit union in writing of its approval of changes to the articles or the credit union alone in writing of its approval in the case of amendment of the bylaws.

(c) Final action by the department in approving or disapproving articles or amendments thereto or to the bylaws shall be conclusive, except that it may be subject to judicial review under Code Section 7-1-90. (Ga. L. 1967, p. 595, § 4; Code 1933, § 41A-3006, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 22; Ga. L. 2005, p. 826, § 15/SB 82.)

**The 2005 amendment**, effective May 5, 2005, in subsection (a), inserted "of any changes to the articles" and "inform the"; and, in subsection (b), inserted "of changes to the articles" in the last sentence.

**7-1-635.1. Out-of-state credit unions.**

(a) A credit union organized in another state may conduct business and establish a place of business in this state with the approval of the department. The department must find that the out-of-state credit union:

(1) Is a credit union organized under laws of a state other than the State of Georgia or of the United States, which state grants similar authority to credit unions organized under the laws of this state;

(2) Is financially solvent and operates in conformance with the laws and regulations of its charter jurisdiction; and

(3) Has deposit insurance comparable to that required for credit unions chartered in this state.

(b) The out-of-state credit union must agree to:

(1) Grant loans at rates not in excess of the rates permitted for credit unions incorporated under the laws of Georgia;

(2) Comply with the same consumer protection provisions that credit unions incorporated under this chapter must obey; and

(3) Designate and maintain an agent for the service of process in this state.

(c) The department may examine the operations of any out-of-state credit union for the purpose of determining that the scope of its activities does not exceed that allowed pursuant to this chapter and that the facility is otherwise operating in compliance with the applicable laws of this state. The department may by regulation establish minimum requirements for the maintenance of books and records in sufficient form to enable the department to carry out its responsibilities under this Code section.

(d) The department may enter into cooperative and reciprocal agreements with the credit union regulatory authority of any government for the periodic examination of credit union offices and facilities of any kind located within this state and may accept reports from such authorities in lieu of conducting its own examination for compliance with the laws of this state.

(e) A credit union which is approved under this Code section shall be exempt from the requirements of Article 15 of Chapter 2 of Title 14. (Code 1933, § 41A-3008, enacted by Ga. L. 1981, p. 753, § 1; Ga. L. 1989, p. 1257, § 23; Ga. L. 2005, p. 826, § 16/SB 82.)

**The 2005 amendment**, effective May 5, 2005, in paragraph (a)(2), deleted a semicolon from the end; in paragraph (a)(3), substituted a period for “; and” at

the end; and deleted former paragraph (a)(4).

to Code Section 28-9-5, in 2005, “; and” was added at the end of paragraph (a)(2).

**Code Commission notes.** — Pursuant

## 7-1-636. Effect on articles and duration of existing credit unions.

### OPINIONS OF THE ATTORNEY GENERAL

**Credit unions in existence prior to April 1, 1975.** — Current state law governing credit unions which were in existence and validly operating prior to April

1, 1975, allows those credit unions to maintain the fields of membership that they possessed prior to April 1, 1975. 2004 Op. Att’y Gen. No. 2004-6.

### PART 2

#### OPERATION AND REGULATION

## 7-1-650. Powers.

A credit union shall have, in addition to the powers common to all corporations under the laws of this state, the following powers:

(1) It may receive funds from its members or other financial institutions in the form of shares and deposits on accounts or as evidenced by certificates of deposit issued by the credit union but shall not have the power to offer third-party payment services except as authorized under Code Section 7-1-670;

(2) It may receive savings deposits from nonmembers in such manner as the bylaws may provide, but such deposits may not be subject to check and may not bear a greater rate of interest than the rate of interest paid to members for the same class of deposit;

(3) It may make loans to members subject to approval by its credit committee or authorized employees pursuant to Code Section 7-1-658;

(4) It may also invest, on the authority of its board of directors or by employees authorized by the board of directors, funds in the following manner:

(A) In obligations of the United States, including bonds and securities upon which payment of principal and interest is fully guaranteed by the United States; obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, or any corporation designated in Section 846 of Title 31 of the United States Code as a wholly owned government corporation; or in obligations, participations, or other instruments of or issued



by or fully guaranteed as to principal and interest by the Federal National Mortgage Association or the Government National Mortgage Association;

(B) In general and direct obligations of the State of Georgia, its counties, districts, and municipalities which have been validated as provided by law, if no more than 25 percent of the shares and deposits of a credit union shall be invested in the obligations of any one such obligor;

(C) In loans to other credit unions, provided the loans do not exceed 10 percent of the shares, deposits, and surplus of the investing credit union;

(D) By depositing its funds in banks, building and loan associations, savings and loan associations, and credit unions; by purchasing certificates of deposit and savings certificates which such financial institutions are authorized to issue; and by selling or purchasing federal or correspondent (daily) funds or loan participations through such financial institutions; subject to limitations prescribed in regulations issued by the department; and

(E) In any other types of investments authorized by the department, including commercial paper, provided such investments shall not, in the aggregate, exceed 10 percent of the shares, deposits, and surplus of the investing credit union. In lieu of the foregoing limitation, any credit union may invest up to 15 percent of its equity capital as defined by the department in authorized investments issued by any single obligor;

(5) It may borrow from any source, but the total of such borrowings shall at no time exceed 50 percent of paid-in shares, deposits, and surplus. The department may, notwithstanding the other provisions of this Code section, temporarily waive the requirements of this paragraph to permit an individual credit union to borrow for emergency purposes;

(6) It may undertake with the approval of the department other activities which are not inconsistent with this chapter or regulations adopted pursuant thereto, including such powers as are afforded to federally chartered credit unions, either directly, through a subsidiary corporation, or in cooperation with other credit unions; provided, however, no such approval shall be granted unless the commissioner determines the activities do not present undue safety and soundness risks to the credit union involved;

(7) It may organize and engage in business without having any stated amount of capital subscribed or paid in other than that derived from the subscribers' qualifying shares, may commence business with

only such capital authorized and paid in as may be provided in its bylaws, and may provide for the payment and withdrawal thereof as and in the manner provided by its bylaws;

(8) It may purchase, hold, and convey real estate for the following purposes only:

(A) Such real estate as shall be necessary for the convenient transaction of its business, subject to the prior approval of the department;

(B) Such real estate as shall be conveyed to it in satisfaction of debt previously contracted in the course of its business; and

(C) Such real estate as it shall purchase at sales under judgments, decrees, or mortgage foreclosures pursuant to mortgages or security deeds held by it;

(9) No real estate acquired in the cases provided for by subparagraphs (B) and (C) of paragraph (8) of this Code section and no real estate which has ceased to be used as credit union premises shall be held for a longer period than five years, unless the time shall be extended by the department. Properties, other than real estate, which are acquired in satisfaction of debts previously contracted and which a credit union is not otherwise authorized to own shall be held for no longer than six months unless such time period is extended by the department. Disposition of such property may be financed by the credit union without the advance of additional funds irrespective of the purchasers' membership in the credit union and of ordinarily applicable collateral margin requirements;

(10) It may provide through an amendment to its bylaws which shall be approved by two-thirds of its membership present and voting as otherwise provided in this part for the elimination or limitation of the personal liability of a director to the members in their capacity as shareholders of the credit union to the same extent as a bank or trust company operating under the provisions of this chapter. (Ga. L. 1925, p. 165, § 8; Code 1933, § 25-105; Ga. L. 1956, p. 742, § 1; Ga. L. 1968, p. 465, § 3; Code 1933, § 41A-3101, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1979, p. 417, § 1; Ga. L. 1981, p. 1244, § 4; Ga. L. 1987, p. 1586, §§ 12-14; Ga. L. 1989, p. 1211, § 12; Ga. L. 1990, p. 300, § 1; Ga. L. 1999, p. 674, § 26; Ga. L. 2005, p. 826, § 17/SB 82.)

**The 2005 amendment**, effective May 5, 2005, in paragraph (1), inserted "or other financial institutions"; in paragraph (2), deleted "passbook" preceding "savings deposits" near the beginning; in para-

graph (3), substituted "subject to approval by" for "through"; substituted the present provisions of the introductory language of paragraph (4) for the former provisions and, in paragraph (6), inserted "includ-

ing such powers as are afforded to federally chartered credit unions,” and added the proviso at the end.

### **7-1-651. Membership; shares.**

(a) The membership of the credit union shall consist of the initial subscribers and such other persons within the field of membership as may have subscribed to one share and have paid for same together with the required entrance fee and complied with all other requirements contained in the bylaws. No subscriber or other member shall hold more than one share out of any class of shares. The bylaws may provide for separate classes of shares for borrowers and depositors and for the par value of each share for each class but in no event shall the par value be less than \$1.00.

(b) Societies, associations, partnerships, and corporations composed of persons who are eligible for membership may be admitted to membership in the same manner and under the same conditions as such persons.

(c) A person or corporation who leaves the field of membership may be permitted to retain his membership in the credit union at the discretion of the board of directors. (Ga. L. 1925, p. 165, §§ 1, 9; Code 1933, §§ 25-101, 25-108; Code 1933, § 41A-3102, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1985, p. 823, § 1; Ga. L. 2009, p. 86, § 7/HB 141.)

**The 2009 amendment**, effective July 1, 2009, substituted “\$1.00” for “\$5.00” at the end of the last sentence of subsection (a).

### **7-1-653. Expulsions and withdrawals; disposition of deposits, interest, shares, or dividends; reinstatement.**

(a) At any regular or called meeting of the members, by a two-thirds’ vote of those present, the members may expel from the credit union any member thereof. A member may withdraw from a credit union and a nonmember may withdraw deposits as provided in this Code section by filing a written notice of such intention. All deposits of an expelled or withdrawing member or nonmember with any interest accrued shall be paid to such member or nonmember, subject to 60 days’ notice, after deducting any amounts due to the credit union by such member or nonmember. A credit union, upon the resignation or expulsion of a member, shall cancel the share, deposits, or dividends or interest due thereon and may apply the withdrawal value of such funds toward the liquidation of such member’s indebtedness. Said expelled or withdrawing member or nonmember shall have no further right in said credit union or to any of its benefits, but such expulsion or withdrawal shall



not operate to relieve said member or nonmember from any remaining liability to the credit union.

(b) A member may be expelled for reasons defined in the bylaws by a two-thirds' vote of the board of directors. An expelled member may obtain reinstatement by an affirmative vote of the majority of the members voting at the next annual meeting of the credit union. (Ga. L. 1925, p. 165, §§ 16, 21; Code 1933, §§ 25-109, 25-110; Code 1933, §§ 41A-3104, 41A-3105, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1244, § 6; Ga. L. 1982, p. 3, § 7; Ga. L. 2005, p. 826, § 18/SB 82; Ga. L. 2010, p. 878, § 7/HB 1387.)

**The 2005 amendment**, effective May 5, 2005, designated the existing provisions of this Code section as subsection (a) and added subsection (b).

3, 2010, part of an Act to revise, modernize, and correct the Code, revised punctuation in the first sentence of subsection (b).

**The 2010 amendment**, effective June

### **7-1-655. Boards of directors; credit and supervisory committees; officers; oaths of officials; removal from office.**

(a) At the first annual meeting the members shall elect from among their number a board of directors and at each annual meeting thereafter shall elect successors to the members of the board of directors whose terms of office expire at such annual meeting.

(b) Except as this Code section permits the bylaws of a credit union to provide otherwise, members of the board of directors elected at the first annual meeting shall serve until the next annual meeting and until their successors are elected and qualified. A credit union may in its bylaws provide for staggered elections for members of the board of directors; but in that event the bylaws shall provide that as nearly as possible one-third of the board shall be elected at each annual meeting.

(c) At the organizational meeting and at its first meeting after each annual meeting of the members, the board of directors shall appoint a supervisory committee, credit committee, chairperson, president, secretary, and such other officers consistent with the bylaws as the board deems desirable. No member of the supervisory committee may serve as a member of the credit committee or as an officer, unless the board of directors functions as the credit committee as provided for in subsection (f) of Code Section 7-1-658.

(d) The chairman of the credit and supervisory committees shall be appointed by the board from among its number. Both the credit and supervisory committees shall be accountable to the board and members of such committees may be removed by the board.

(e) Officers and the committee members elected or appointed at the organizational meeting shall serve until the first annual meeting.

Thereafter, the terms of such persons shall be until their successors are chosen or have duly qualified. An officer elected or appointed to fill an unexpired term shall be elected or appointed for the balance of that term.

(f) All members of the board and all officers and committee members shall be sworn to perform faithfully the duties of their several offices in accordance with this chapter and the bylaws or as otherwise lawfully established. The oaths shall be subscribed in writing and a copy thereof shall be retained in the minutes of the meetings of the board.

(g) Directors may be removed from office as provided in Code Section 7-1-485. (Ga. L. 1925, p. 165, § 12; Code 1933, § 25-112; Ga. L. 1962, p. 74, § 1; Code 1933, § 41A-3106, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1976, p. 1681, § 3; Ga. L. 1981, p. 1244, § 7; Ga. L. 1989, p. 1211, § 13; Ga. L. 2011, p. 518, § 4/HB 239.)

**The 2011 amendment**, effective July 1, 2011, in subsection (c), substituted “chairperson” for “chairman” in the first sentence, and added “, unless the board of directors functions as the credit committee as provided for in subsection (f) of Code Section 7-1-658” at the end of the second sentence.

#### **7-1-656. Duties of directors; meetings; applicability of Code Section 7-1-490.**

(a) The board of directors shall be responsible for the affairs, funds, and records of the credit union and shall meet as often as necessary, but at least once during ten different months of each calendar year. Unless the bylaws specifically reserve any or all of the duties to the members, it shall be the special duty of the directors:

(1) To act upon all applications for membership or approve the actions of an officer without loan granting authority, designated by the board of directors to approve applications for membership;

(2) To determine from time to time rates of interest and dividends which shall be allowed on deposits and charged on loans consistent with this article and other applicable laws and to authorize any interest refunds on such classes of loans and under such conditions as the board prescribes;

(3) To fix the amount of the fidelity bond which shall be required of all officers, employees, agents, or members having custody of funds, properties, or records; provided, however, that the amount of such fidelity bond shall not be less than such minimum requirements as shall be prescribed by regulation of the department and shall be in such form as may from time to time be approved by the department;

(4) To fix within the restrictions imposed by statute the maximum amount of deposits which may be made by and the maximum amount that may be loaned to any one member;

(5) To fill vacancies on the board of directors, credit committee, and supervisory committee until the election and qualification of a successor;

(6) To have charge of the investment of funds of the credit union other than loans to members within the restrictions imposed by statute or delegate investment authority to a qualified committee or officer as designated by the board of directors; and

(7) To perform such other duties as the members may from time to time authorize.

(b) The provisions of Code Section 7-1-490 relative to the responsibilities of directors and officers and the delegation of investment decisions shall be applicable to the duties of directors, credit and supervisory committee members, and officers of credit unions. (Ga. L. 1925, p. 165, § 13; Code 1933, § 25-113; Ga. L. 1956, p. 742, § 2; Ga. L. 1968, p. 465, § 6; Code 1933, § 41A-3107, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 32; Ga. L. 1981, p. 1244, § 8; Ga. L. 1989, p. 1211, § 14; Ga. L. 2002, p. 1220, § 6; Ga. L. 2005, p. 826, § 19/SB 82.)

**The 2005 amendment**, effective May 5, 2005, in paragraph (a)(1), added language beginning “or approve” at the end; and, in paragraph (a)(6), inserted “or del-

egate investment authority to a qualified committee or officer as designated by the board of directors” following “statute”.

## **7-1-660. Dividends; interest.**

At such intervals and for such periods as the board of directors may authorize, dividends and interest from retained earnings may be declared at such rates as are determined by the board, provided that such dividends and interest shall not be paid until provision for the transfer to the allowance for loan losses has been made. Dividends or interest in excess of 100 percent of a credit union's net earnings before dividends shall be approved in writing by the department prior to payment, provided that an application from a credit union with net worth equal to or in excess of the requirements for a well-capitalized credit union, as defined by the National Credit Union Administration rules and regulations, shall be deemed to be approved five business days after the receipt of the dividend approval form by the department unless the department notifies the credit union that the dividend is not approved within this period. The proposed dividend or interest may be paid after approval by the department upon its determination that such payment would be in the continued best interest of the credit union, would promote its stability, and would not impair its ability to repay its creditors other than its shareholders and depositors. (Ga. L. 1925, p. 165, § 13; Code 1933, § 25-113; Ga. L. 1956, p. 742, § 2; Ga. L. 1968, p. 465, § 6; Code 1933, § 41A-3111, enacted by Ga. L. 1974, p. 705, § 1;



Ga. L. 1975, p. 445, § 33; Ga. L. 1981, p. 1244, § 11; Ga. L. 2005, p. 826, § 20/SB 82; Ga. L. 2006, p. 72, § 7/SB 465; Ga. L. 2010, p. 878, § 7/HB 1387.)

**The 2005 amendment**, effective May 5, 2005, substituted “allowance for loan losses” for “required reserves” near the end of the first sentence, in the second sentence, substituted “100 percent” for “90 percent”, deleted “in the fiscal year preceding the year in which a dividend or interest is proposed” following “before dividends”, and added the proviso at the end.

**The 2006 amendment**, effective April

14, 2006, part of an Act to revise, modernize, and correct the Code, inserted a comma following “rules and regulations” in the second sentence of this Code section.

**The 2010 amendment**, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, revised punctuation in the second sentence.

### 7-1-662. Taxes to which subject.

**Law reviews.** — For comment, “If It Quacks Like a Duck: In Light of Today’s Financial Environment, Should Credit

Unions Continue to Enjoy Tax Exemptions?,” see 28 Ga. St. U.L. Rev. 1367 (2012).

### 7-1-663. Rules and regulations of department.

Without limitation on the authority conferred by Article 1 of this chapter, the department is authorized to make such rules and regulations not inconsistent with this article and other applicable statutes governing the operation of credit unions as it may consider reasonable and proper for the protection of all funds invested. The department shall solicit comments from credit unions at least annually for recommended changes to the department’s rules and regulations. (Code 1933, § 25-123.1, enacted by Ga. L. 1968, p. 465, § 1; Code 1933, § 41A-3114, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2005, p. 826, § 21/SB 82.)

**The 2005 amendment**, effective May 5, 2005, added the last sentence.

### 7-1-665. Subsidiary offices.

A credit union shall not be prohibited from maintaining offices at locations other than its principal offices if the maintenance of such offices shall be reasonably necessary to furnish service to its membership. The establishment of additional offices shall be subject to the prior approval of the department upon application to it in such form as it may prescribe by regulation. Participation in shared branching networks does not constitute the establishment of additional offices under this Code section. (Code 1933, § 41A-3116, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2005, p. 826, § 22/SB 82.)

**The 2005 amendment**, effective May 5, 2005, added the last sentence.

### 7-1-667. Mergers.

(a) A credit union may, with the approval of the department and in accordance with such uniform rules and regulations as it shall make and promulgate, be merged with another credit union under the articles of such credit union, upon any plan agreed upon by the majority of the board of each credit union joining the merger and approved by not less than two-thirds of the members of each credit union present and eligible to vote at meetings called for that purpose. The department may allow waiver of the member vote if in its judgment the merger is necessary to protect the safety and soundness of either or both credit unions. All property, property rights, and interests of the credit union so merging shall, upon merger, be transferred to and vested in the credit union under whose articles the merger is effected without deed, endorsement, or other instrument of transfer; and the debts and obligations of the credit union so merging shall be deemed to have been assumed by the credit union under whose articles the merger is effected; and thereafter the articles of the credit union so merging shall be void.

(b) The provisions of Article 8 of Chapter 4 of Title 14, relating to merger and consolidation, shall no longer be applicable to credit unions.

(c) For purposes of this Code section, the term “credit union” shall include a federal credit union. (Code 1933, § 41A-3118, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1980, p. 972, § 7; Ga. L. 2005, p. 826, § 23/SB 82.)

**The 2005 amendment**, effective May 5, 2005, added the second sentence in subsection (a).

### OPINIONS OF THE ATTORNEY GENERAL

**Credit unions in existence prior to April 1, 1975.** — The current statutory provisions governing mergers of state-chartered credit unions allow the field of membership of a pre-1975 credit union to be included in a plan of merger and assumed by the surviving credit union. 2004 Op. Att’y Gen. No. 2004-6.

### 7-1-668. Conversion of state and federal credit unions.

(a) Any credit union operating in this state may convert into a federal chartered credit union, and any federal credit union may convert into a credit union organized under this chapter upon approval of the authority under whose supervision the converted credit union will operate and upon compliance with applicable federal laws as to a

converted federal credit union and upon compliance with applicable state laws as to a converted credit union. In the case of a federal credit union converting to a state credit union, such converting credit union may keep its existing members at the time of conversion, but after conversion eligibility for membership in the converted credit union must comply with state law. If there are other areas of noncompliance with state law, the credit union must provide the department with a plan to bring those areas into compliance with Georgia law within a reasonable period, to be determined by the department.

(b) The procedure for obtaining such approval and effecting the conversions in the case of a credit union shall be as follows:

(1) A meeting of the board of directors, either regular or special, shall be called for the purpose of voting on converting from a federal credit union to a credit union or from a credit union to a federal credit union. A majority of the board of directors shall adopt a resolution approving the contemplated conversion;

(2) A meeting, either regular or special, of the shareholders shall then be called for voting on the proposed conversion. Notice of said meeting shall be given in the manner prescribed in Code Section 7-1-6 and shall include a statement indicating that the proposed conversion will be considered at the meeting. Proof of giving of the notice shall be by the affidavit of the president of the credit union. A majority of the members present at this meeting shall then approve the proposed conversion;

(3) Within ten days after such approval of the conversion, the president or vice-president and treasurer shall file a verified copy of the resolution adopted by the board of directors with the state or federal authority under whose supervision the converting credit union is to operate.

(c) Upon the written approval of the department for conversions to credit unions and with the written approval of the National Credit Union Administration for conversions to federal credit unions, the converting credit union shall then become a credit union under the laws of this state or the United States, as the case may be; and thereupon all assets shall become the property of the new credit union or federal credit union, as the case may be, subject to all existing liabilities, and every person who was a member of the converting credit union shall be a member in the new credit union or federal credit union.

(d) Conversions by state chartered credit unions to financial institutions other than credit unions shall be effected by approval of the department and compliance with any other applicable law. Procedures provided in subsection (b) of this Code section shall be followed for obtaining approval and effecting such conversions, provided that



two-thirds of the members voting shall be required to approve a proposed conversion. The department may prescribe other requirements in order to protect the rights of members or the funds invested. (Code 1933, § 41A-3119, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2005, p. 826, § 24/SB 82.)

**The 2005 amendment**, effective May 5, 2005, added the second and third sentences in subsection (a); deleted “administrator of the” preceding “National Credit Union Administration” near the beginning of subsection (c); and added subsection (d).

### **7-1-669. Central credit union.**

(a) A “central credit union” means a credit union which is organized to serve a field of membership which consists primarily of other credit unions operating pursuant to this chapter, any other state credit union law, or the Federal Credit Union Act. A central credit union may be organized and operated under this chapter and subject to all provisions of this chapter which are not inconsistent with this Code section. Such credit union shall use the word “central” in its name.

(b) The field of membership of a central credit union shall include credit unions organized and operating under this chapter or under the Federal Credit Union Act. In addition, the field of membership may include:

- (1) Members of credit unions which are members of the central credit union;
- (2) Officials and employees of any organization or association of credit unions and of the central credit union;
- (3) Except as limited in Article 1 of this chapter, employees of the department or of the National Credit Union Administration;
- (4) Organizations and associations of persons or credit unions included in the foregoing;
- (5) Persons who are:
  - (A) Members of a credit union that has entered into voluntary or involuntary dissolution; or
  - (B) Indebted to a credit union which has entered into voluntary or involuntary dissolution; or
  - (C) Nonmember depositors of a credit union which has entered into voluntary or involuntary dissolution; and
- (6) Groups within a common bond which are determined by the commissioner to lack the potential membership required for approval of their own credit union.

(c) The central credit union may make loans to individuals who are members pursuant to paragraph (1) of subsection (b) of this Code section only upon approval of the credit committee of the member credit union of which the individual is a member and to individuals who are members pursuant to paragraph (3) of subsection (b) of this Code section only upon reporting such loan to the appropriate supervisory authority.

(d) The commissioner may, in his discretion, approve greater borrowings than provided in this chapter when required to enable the credit union to meet its obligations to its members and otherwise assist its members during any emergency or hardship.

(e) A central credit union may:

(1) Make loans to other credit unions, but loans to any one credit union shall not exceed:

(A) For unsecured loans and lines of credit, excluding pass-through and guaranteed loans from the Central Liquidity Fund and the National Credit Union Share Insurance Fund, more than 50 percent of capital; or

(B) For secured loans and lines of credit, excluding those secured by shares or marketable securities and member reverse repurchase transactions, more than 100 percent of capital.

For the purposes of this paragraph, the definition of capital shall be consistent with federal law and regulations. The department may utilize other definitions found in the National Credit Union Administration rules and regulations in interpreting this subsection;

(2) Make loans to other members as specified in Code Section 7-1-658;

(3) Purchase shares of and make deposits in other credit unions;

(4) Obtain or acquire the assets and liabilities of any credit union which enters into liquidation;

(5) Invest in and grant loans to associations of credit unions and to organizations chartered to provide service to credit unions; and

(6) Borrow money and accept deposits from any source.

(f) The commissioner may issue such special regulations as he or she may deem prudent or necessary to allow a central credit union to promote effectively the liquidity and sound financial management of its member credit unions without unduly endangering its own liquidity and sound financial condition. Such special regulations need not be applicable to all credit unions but may be applicable only to the central credit union. The central credit union shall maintain an adequate

allowance for loan and lease losses in accordance with generally accepted accounting principles and such other reserves as may be required by the rules and regulations of the department.

(g) A central credit union shall have all the rights and powers of any other credit union organized under this chapter and the additional rights and powers specified in this Code section. (Code 1933, § 41A-3120, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2002, p. 1220, § 9; Ga. L. 2005, p. 826, § 25/SB 82; Ga. L. 2010, p. 878, § 7/HB 1387.)

**The 2005 amendment**, effective May 5, 2005, in subsection (a), inserted “, any other state credit union law,” in the first sentence; in paragraph (e)(1), inserted a colon after “exceed” and deleted “10 percent of the shares, deposits, and surplus of the credit union borrower, without prior approval of the department;”; added subparagraphs (e)(1)(A), (e)(1)(B), and the undesignated paragraph; redesignated former paragraphs (e)(2) through (e)(5) as

present paragraphs (e)(3) through (e)(6), respectively; and added paragraph (e)(2).

**The 2010 amendment**, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (e)(1)(A).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2005, “no” was deleted preceding “more than” in subparagraphs (e)(1)(A) and (e)(1)(B).

### 7-1-670. Third-party payment services.

(a) Any credit union may apply to the department for permission to offer third-party payment services to its members. The department shall exercise its discretion in determining whether to approve such request but shall not grant its approval until it is satisfied that:

(1) The convenience and need of the membership will be served by the proposed change;

(2) There is reasonable promise of adequate support of the program in light of:

(A) The competition offered by existing financial institutions;

(B) The financial history of the credit union and its membership; and

(C) The opportunities for profitable employment of depositors' funds as indicated by the average demand for credit, the number of potential depositors, the volume of transactions, and stability of the common bond;

(3) The managerial resources, internal controls, and operating procedures of the credit union are sufficient to administer the program in a safe and sound manner; and

(4) The capital and reserves of the credit union are adequate in light of current economic conditions and asset quality of the credit union.



(b) A credit union meeting certain financial and managerial criteria specified by department rule, regulation, or policy shall be exempt from the need for prior approval. Prior notice of intent to offer third-party payment services will be provided to the department.

(c) Upon the commencement of third-party payment services, a credit union shall be subject to Code Sections 7-1-287, pertaining to investment securities; 7-1-288, pertaining to corporate stock and securities; 7-1-371, pertaining to legal reserve requirements; and rules and regulations of the department relating to the foregoing Code sections of law and shall not pay a greater rate of interest on third-party payment accounts than is allowed to be paid by commercial banks.

(d) A credit union that is approved to offer third-party payment services may apply to the department to offer other services, such as check-cashing services, sale of money orders, or international remittances, which services are determined by the department to be safe, sound, convenient, and necessary and responsive to those consumers eligible for membership. The department may impose restrictions on these services if approved.

(e) Authority to offer third-party payment services may be suspended or revoked in accordance with Code Section 7-1-91. (Code 1933, § 41A-3121, enacted by Ga. L. 1979, p. 417, § 2; Ga. L. 1983, p. 602, § 19; Ga. L. 2001, p. 970, § 9; Ga. L. 2005, p. 826, § 26/SB 82; Ga. L. 2007, p. 502, § 16/SB 70.)

**The 2005 amendment**, effective May 5, 2005, redesignated former subsection (d) as subsection (e); and added present subsection (d).

**The 2007 amendment**, effective July 1, 2007, deleted “7-1-286, pertaining to real estate loans” preceding “7-1-287,” in subsection (c).

## ARTICLE 4

### SALE OF PAYMENT INSTRUMENTS

**Effective date.** — This article became effective July 1, 2014.

**Editor’s notes.** — Ga. L. 2014, p. 251, § 1/HB 982, effective July 1, 2014, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of Code Section 7-1-680 through 7-1-684, 7-1-684.1, 7-1-685 through 7-1-687, 7-1-687.1, 7-1-688, 7-1-689, 7-1-689.1, 7-1-689.2, 7-1-690 through 7-1-692, relating to sale of checks or money orders, and was based on Ga. L. 1965, p. 81, § 2-17; Code 1933, §§ 41A-3201 — 41A-3213, en-

acted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, §§ 35-36; Ga. L. 1978, p. 1717, §§ 8-9; Ga. L. 1984, p. 22, § 7; Ga. L. 1985, p. 1131, § 1; Ga. L. 1986, p. 458, § 10; Ga. L. 1990, p. 362, § 1; Ga. L. 1994, p. 1780, § 3; Ga. L. 1997, p. 143, § 7; Ga. L. 1995, p. 673, §§ 26-28; Ga. L. 2000, p. 174, § 18; Ga. L. 2000, p. 1589, § 3; Ga. L. 2003, p. 843, §§ 10-15; Ga. L. 2004, p. 458, §§ 6-7; Ga. L. 2005, p. 826, § 27/SB 82; Ga. L. 2007, p. 502, §§ 17/SB 70 — 24/SB 70; Ga. L. 2009, p. 86, §§ 8/HB 141 — 141/HB 141; Ga. L. 2010, p. 878, § 7/HB 1387; Ga. L. 2013, p. 30, § 2/SB 139.

**7-1-680. Definitions.**

As used in this article, the term:

(1) “Authorized agent” means a person designated by a licensee pursuant to Code Section 7-1-683.1 to engage in money transmission, the sale of payment instruments, or the issuance of payment instruments.

(2) “Check” means any check, money order, draft, or negotiable demand instrument.

(3) “Closed-loop transaction” means a transaction where the value or credit is primarily intended to be redeemed for a limited universe of goods, intangibles, services, or other items provided by the issuer of the payment instrument, its affiliates or agents, or others involved in the transaction functionally related to the issuer or its affiliates or agents.

(4) “Commissioner” means the commissioner of banking and finance.

(5) “Control,” “controlling,” “controlled by,” or “under common control with” means the direct or indirect possession of power to direct or cause the direction of the management and policies of a person.

(6) “Covered employee” means any employee of a licensee or an authorized agent engaged in any function related to the selling of payment instruments or money transmission.

(7) “Department” means the Department of Banking and Finance.

(8) “Executive officer” means the chief executive officer, president, chief financial officer, chief operating officer, each vice president with responsibility involving policy-making functions for a significant aspect of a person’s business, secretary, treasurer, or any other person performing similar managerial or supervisory functions with respect to any organization, whether incorporated or unincorporated.

(9) “Individual” means a natural person.

(10) “Licensee” means a person, including, but not limited to, a money transmitter and a payment instrument seller, duly licensed by the department pursuant to this article.

(11) “Misrepresent” means to make a false statement of a substantive fact. The term may also mean to engage in any conduct which leads to a false belief which is material to the transaction.

(12) “Monetary value” means a medium of exchange, whether or not redeemable in money.

(13) “Money transmission,” “transmit money,” or “transmission of money” means engaging in the business of receiving money or monetary value for transmission or transmitting money or monetary value within the United States or to locations abroad by any and all means, including, but not limited to, an order, wire, facsimile, or electronic transfer. The term does not include closed-loop transactions.

(14) “Money transmitter” means a person licensed under this article to transmit money.

(15) “Nation-wide Multistate Licensing System and Registry” means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of certain persons engaged in nondepository activities.

(16) “Open-loop transaction” means a transaction using a payment instrument with stored value to redeem for goods or services at any location that accepts such payment instrument.

(17) “Payment instrument” means any instrument, order, or device for the payment or transmission of money or monetary value, whether or not it is a negotiable instrument under the terms of Article 3 of Title 11, relating to negotiable instruments. The term includes, but is not limited to, checks, money orders, drafts, stored value cards, and open-loop transactions. The term does not include closed-loop transactions, credit card vouchers, letters of credit, or any instrument that is redeemable by the issuer only in specific goods or services of the issuer.

(18) “Payment instrument holder” means a person that has purchased a payment instrument from a payment instrument seller or who has had monetary value transmitted by a money transmitter.

(19) “Payment instrument issuer” or “payment instrument seller” means a person licensed under this article to engage in the issuance or sales of payment instruments.

(20) “Person” means any individual, sole proprietorship, corporation, limited liability company, partnership, trust, or any other group of individuals, however organized.

(21) “Sale” and “selling” mean the passing of title from the payment instrument seller or the payment instrument seller’s agent to a payment instrument holder or remitter or an agreement to transfer money or monetary value.

(22) “Sale of payment instruments,” “selling of payment instruments,” or “issuance of payment instruments” means the creation,



issuance, or sale of a payment instrument that is redeemable in cash or monetary value.

(23) “Signed” shall have the same meaning as provided in paragraph (39) of Code Section 11-1-201.

(24) “Ultimate equitable owner” means a person that:

(A) Owns, directly or indirectly, a 10 percent or more interest in a corporation or any other form of business organization;

(B) Owns, directly or indirectly, 10 percent or more of the voting shares of any corporation or any other form of business organization; or

(C) Exerts control, directly or indirectly, over a corporation or any other form of business organization, regardless of whether such person owns or controls such interest through one or more natural persons or one or more proxies, powers of attorney, nominees, corporations, associations, limited liability companies, partnerships, trusts, joint stock companies, other entities or devices, or any combination thereof.

(25) “Unique identifier” means a number or other identifier assigned by protocols established by the Nation-wide Multistate Licensing System and Registry. (Code 1981, § 7-1-680, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)

**7-1-681. Licensing requirements; engagement in sale of payment instruments or money transmission defined; liabilities.**

(a) Pursuant to this article, the department may license a person to engage in the sale of payment instruments or the transmission of money.

(b) A license for the sale of payment instruments authorizes the licensee to sell payment instruments and to transmit money.

(c) A license for the transmission of money authorizes the licensee to transmit money.

(d) No person, regardless of the location of such person, its facilities, or its agents, shall engage in the sale of payment instruments or money transmission without having first obtained a license authorizing such activity under this article. This prohibition applies whether or not a person utilizes a branch, subsidiary, affiliate, or agent in this state. A person is deemed to be engaged in the sale of payment instruments or money transmission if the person advertises any of those services, provides any of those services with or without compensation, solicits to

provide any of those services, or holds itself out as providing any of those services to or from this state, even if the person has no physical presence in this state.

(e) Every person that directly or indirectly controls another that violates subsection (d) of this Code section, including but not limited to each general partner, executive officer, joint venture, ultimate equitable owner, or director of such person, and every person occupying a similar status or performing similar functions as such person violates with and to the same extent as such person. Any person that directly or indirectly controls a person that violates subsection (d) of this Code section may avoid liability if such person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of the existence of the facts by reason of which the original violation is alleged to exist. (Code 1981, § 7-1-681, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)

### **7-1-682. Exemption from licensing requirements.**

The requirement for licensure set forth in this article shall not apply to:

- (1) Any state or federally chartered bank, trust company, credit union, savings and loan association, or savings bank with deposits that are federally insured;
- (2) Any authorized agent of a licensee;
- (3) The United States Postal Service;
- (4) A state or federal governmental department, agency, authority, or instrumentality and its authorized agents;
- (5) Any foreign bank that establishes a federal branch pursuant to the International Bank Act, 12 U.S.C. Section 3102; or
- (6) An individual employed by a licensee or any person exempted from the licensing requirements of this article when acting within the scope of employment and under the supervision of the licensee or exempted person as an employee and not as an independent contractor. (Code 1981, § 7-1-682, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)

### **7-1-683. Requirements for licensure; fees; rules and regulations.**

(a) Each applicant for a license under this article shall:

- (1) Submit an application in writing, which is made under oath and in such form as the department may prescribe;

(2) Furnish to the Nation-wide Multistate Licensing System and Registry the following information:

(A) The legal name and principal office address of the person applying for the license;

(B) The name, residence, and business address of each director, ultimate equitable owner, and executive officer;

(C) If the applicant has one or more branches or other locations, including but not limited to locations operated by an authorized agent, at or through which the applicant proposes to engage in the sale of payment instruments or money transmission within this state, the complete address of each such location; and

(D) The location where its initial registered office will be located in this state, if any; and

(3) Submit such other data, financial statements, and pertinent information as the department may require with respect to the applicant, its directors, trustees, officers, members, ultimate equitable owners, subsidiaries, affiliates, or agents.

(b) The application for license shall be filed together with:

(1) An investigation and supervision fee established by the department through rule or regulation which shall not be refundable but which, if the license is granted, shall satisfy the fee requirement for the first licensed year or the remaining part thereof;

(2) Items required by other provisions of this article, including but not limited to Code Sections 7-1-683.2 and 7-1-684; and

(3) Other information as may be required by the department.

(c) Where a person engages only in the sale of payment instruments issued by another person which is primarily obligated for payment of the payment instrument and the seller is a wholly owned subsidiary of or is wholly owned by the sole shareholder of the issuer, the department may grant a single license naming both the seller and issuer as joint licensees. In such cases, only a single license fee shall be collected and only one corporate surety bond, pursuant to Code Section 7-1-683.2, shall be required where such bond names both the seller and issuer.

(d) The department shall pay all fees received from licensees and applicants related to applications, licenses, and renewals to the Office of the State Treasurer; provided, however, that the department may net such fees to recover the cost of participation in the Nation-wide Multistate Licensing System and Registry.

(e) The department shall enact rules and regulations regarding the time frame by which all persons must submit an original or renewal



application for licensure through the Nation-wide Multistate Licensing System and Registry. (Code 1981, § 7-1-683, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)

**7-1-683.1. Locations for conduct of business; contracting with authorized agent; requirements of agent.**

(a) As authorized by this Code section, a licensee may conduct its business through designated authorized agents at one or more locations in this state, so long as such locations have been included in the licensee's application and reports as required by Code Section 7-1-683 and subsection (d) of Code Section 7-1-686. The department may refuse within 30 days after application, for cause, to approve a licensee's designation of an authorized agent. In such cases the authorized agent shall have the same procedural rights as are provided in this article for the denial of an application for a license. No additional license other than that obtained by the licensee shall be required of any authorized agent of a licensee. An authorized agent of a licensee shall sell payment instruments or transmit money only at the location designated in the written notice provided to the department.

(b) Licensees desiring to conduct licensed activities through authorized agents shall enter into a written contract with the authorized agent. The contract shall authorize the agent to operate only pursuant to the terms of the contract and shall specifically designate the authorized activities that the agent may engage in on behalf of the licensee. Upon request of the department, a licensee shall provide the department with a copy of the executed written contract between the licensee and its authorized agent.

(c) Upon the department receiving written notice from the licensee designating an authorized agent, the authorized agent shall be:

(1) Required to operate in full compliance with this article, the rules and regulations promulgated under this article, and any applicable order issued by the commissioner;

(2) Required to timely remit all money legally due to the licensee in accordance with the terms of the written contract between the licensee and the authorized agent;

(3) Prohibited from utilizing subagents to carry out its responsibilities;

(4) Subject to examination and investigation by the department as set forth in this article, including, but not limited to, the requirements of Code Section 7-1-689;

(5) Subject to administrative actions, including, but not limited, the revocation or suspension of its authorization to act as an

authorized agent, a cease and desist order, and the imposition of fines; and

(6) Required to comply with applicable state and federal law. (Code 1981, § 7-1-683.1, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)

### **7-1-683.2. Bonding.**

(a) An applicant shall provide with its application a corporate surety bond issued by a bonding company or insurance company authorized to do business in this state and approved by the department. The bond for payment instrument sellers shall be in the principal sum of \$250,000.00. The bond for money transmitters shall be in the principal sum of \$100,000.00.

(b) Notwithstanding subsection (a) of this Code section, the department may require an applicant or a licensee to provide additional coverage for the adequate protection of payment instrument holders if the average daily outstanding balances for payment instrument sellers exceed the current bond amount, the average daily outstanding orders to transmit not yet paid for money transmitters exceed the current bond amount, or the department determines that additional coverage is necessary in order to satisfy the department that the provisions of subsection (a) of Code Section 7-1-684 are fulfilled. A licensee's level of outstandings shall be determined by the portion of the licensee's financial reports dealing with transactions originating in Georgia which shall be submitted to the department as set forth in its rules and regulations. However, under no circumstances shall the additional bond coverage required by the department exceed \$2,000,000.00.

(c) The bond shall be in a form satisfactory to the department and shall run to the State of Georgia for the benefit of the department or any payment instrument holders against the licensee or its agents. The condition of the bond shall require the licensee to pay any and all moneys for the benefit of any person damaged by noncompliance of a licensee or its agent with this article, with the rules and regulations enacted pursuant to this article, or with any condition of the bond or to pay any and all moneys that may become due and owing any creditor of or claimant against the licensee arising out of the licensee's sale of payment instruments or money transmission in this state, whether through its own acts or the acts of an agent. Damage payments due under the bond include moneys owed to the department for fees, fines, or penalties. In no event shall the aggregate liability of the surety exceed the principal sum of the face amount of the bond. Claimants against the licensee may bring an action directly on the surety bond. (Code 1981, § 7-1-683.2, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)

**7-1-683.3. Authority of department.**

(a) The department is authorized to:

(1) Participate in the Nation-wide Multistate Licensing System and Registry in order to facilitate the sharing of information and standardization of the licensing and application processes for persons subject to this article;

(2) Enter into operating agreements, information sharing agreements, interstate cooperative agreements, and other contracts necessary for the department's participation in the Nation-wide Multistate Licensing System and Registry;

(3) Disclose or cause to be disclosed without liability, via the Nation-wide Multistate Licensing System and Registry, applicant and licensee information, including, but not limited to, violations of this article and enforcement actions, to facilitate regulatory oversight across state jurisdictional lines;

(4) Request that the Nation-wide Multistate Licensing System and Registry adopt an appropriate privacy, data security, and security breach notification policy that is in full compliance with existing state and federal law; and

(5) Establish and adopt, by rule or regulation, requirements for participation by applicants and licensees in the Nation-wide Multistate Licensing System and Registry upon the department's determination that each requirement is consistent with both the public interest and the purposes of this article.

(b) The department shall enact rules and regulations establishing a process whereby licensees may challenge information entered by the department on the Nation-wide Multistate Licensing System and Registry.

(c) Irrespective of its participation in the Nation-wide Multistate Licensing System and Registry, the department shall retain full and exclusive authority over determinations of whether to grant, renew, suspend, or revoke licenses issued under this article. Nothing in this Code section shall be construed to reduce or otherwise limit such authority.

(d) Information disclosed through the Nation-wide Multistate Licensing System and Registry is deemed to be disclosed directly to the department and subject to Code Section 7-1-70. Such information shall not be disclosed to the public and shall remain privileged and confidential pursuant to Code Section 7-1-70. (Code 1981, § 7-1-683.3, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)



**7-1-684. Investigation of applicants for licensure; background checks on employees and others.**

(a) The department shall conduct an investigation of every applicant for licensure to determine the financial responsibility, experience, character, and general fitness of such applicant. The department may issue the applicant a license to transmit money or sell payment instruments if the department determines to its general satisfaction that:

(1) The applicant is financially sound and responsible and able to transmit money or sell payment instruments in an honest, fair, and efficient manner and with the confidence and trust of the community; and

(2) All conditions for licensure set forth in this article or the rules and regulations of the department have been satisfied.

(b) The department shall not issue a license or may revoke a license if it finds that the applicant, licensee, or authorized agent; any person who is a director, officer, partner, covered employee, or ultimate equitable owner of the applicant, licensee, or authorized agent; or any individual who directs the affairs of or controls or establishes policy for the applicant, licensee, or authorized agent has been convicted of a felony in any jurisdiction or of a crime which, if committed within this state, would constitute a felony under the laws of this state. For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty or nolo contendere to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered or an adjudication or sentence was otherwise withheld or not entered on that charge, unless and until such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation and sentence of a first offender have been successfully completed and documented or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction occurred or shall have received an official certification of pardon granted by the state's pardoning body where the conviction occurred which removes the legal disabilities resulting from such conviction and restores civil and political rights.

(c) The department shall be authorized to obtain conviction data with respect to any applicant, licensee, or authorized agent, any person

who is a director, officer, partner, covered employee, or ultimate equitable owner of the applicant, licensee, or authorized agent, or any individual who directs the affairs of or controls or establishes policy for the applicant, licensee, or authorized agent. The department may submit directly to the Georgia Crime Information Center two complete sets of fingerprints of such person, together with the required records search fees and such other information as may be required. Fees for background checks that the department administers shall be sent to the department by applicants, licensees, and authorized agents together with the fingerprints.

(d) Upon request by the department, each applicant, licensee, or authorized agent, any person who is a director, officer, partner, covered employee, or ultimate equitable owner of the applicant, licensee, or authorized agent, or any individual who directs the affairs of or controls or establishes policy for the applicant, licensee, or authorized agent shall submit to the department two complete sets of fingerprints, the required records search fees, and such other information as may be required. Fees for background checks that the department administers shall be submitted to the department by applicants, licensees, and authorized agents together with two complete sets of fingerprints, and the department is authorized to net such fees to recover any costs incurred by the department related to running the background checks. Upon receipt of fingerprints, fees, and other required information, the Georgia Crime Information Center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check, or if there is no such finding. All conviction data received by the department or by the applicant, licensee, or authorized agent shall be used by the party requesting such data for the exclusive purpose of carrying out the responsibilities of this article, shall not be a public record, shall be confidential, and shall not be disclosed to any other person or agency except to any person or agency which otherwise has a legal right to inspect such data. All such records shall be maintained by the department and the applicant, licensee, or authorized agent pursuant to laws regarding such records and the rules and regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as applicable. As used in this Code section, 'conviction data' means a record of a finding, verdict, or plea of guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(e) Every applicant and licensee shall be authorized and required to obtain and maintain the results of background checks on covered



employees. Such background checks shall be handled by the Georgia Crime Information Center pursuant to Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information Center. Applicants and licensees shall be responsible for any applicable fees charged by the Georgia Crime Information Center. An applicant or licensee may only employ a person whose background data has been checked and has been found to be in compliance with all lawful requirements prior to the initial date of hire. This provision does not apply to directors, officers, partners, or ultimate equitable owners of applicants or licensees or to persons who direct the affairs of or control or establish policy for applicants or licensees, whose background shall have been investigated through the department before taking office, beginning employment, or securing ownership. Upon receipt of information from the Georgia Crime Information Center that is incomplete or that indicates a covered employee has a criminal record in any state other than Georgia, the employer shall submit to the department two complete sets of fingerprint cards for such person, together with the applicable fees and any other required information. The department shall submit such fingerprints as provided in subsection (d) of this Code section.

(f) Upon request by the department, an applicant, licensee, or authorized agent shall take all steps necessary to have an international criminal history background check performed on any directors, officers, partners, covered employees, or ultimate equitable owners of applicants, licensees, or authorized agents or persons who direct the affairs of or control or establish policy for applicants, licensees, or authorized agents. The results of such international criminal history background check shall be provided to the department.

(g) Applicants and licensees shall have the primary responsibility for obtaining background checks on covered employees. The department shall be entitled to review the files of any applicant or licensee to determine whether the required background checks have been run and whether all covered employees are qualified. The department shall be authorized to discuss the status of employee background checks with applicants, licensees, and authorized agents. Notwithstanding any other provisions in this article, the department shall retain the right to obtain conviction data on covered employees of applicants, licensees, and authorized agents.

(h) The department may use the Nation-wide Multistate Licensing System and Registry as a channeling agent for requesting information from and distributing information to the United States Department of Justice, any governmental agency, or any source so directed by the department. (Code 1981, § 7-1-684, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)



**7-1-684.1. Reporting to Nation-wide Multistate Licensing System and Registry.**

Each licensee shall submit to the Nation-wide Multistate Licensing System and Registry timely reports of condition, which shall be in such form and contain such information as the department and the Nation-wide Multistate Licensing System and Registry may require. (Code 1981, § 7-1-684.1, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)

**7-1-684.2. Use of unique identifier of licensee.**

The unique identifier of any licensee shall be clearly labeled on all advertisements and any other documents required by rule or regulation of the department. (Code 1981, § 7-1-684.2, enacted by Ga. L. 2014, p. 251 § 1/HB 982.)

**7-1-685. Expiration and renewal of licenses.**

Except as otherwise specifically provided in this article, all licenses issued pursuant to this article shall expire on December 31 of each year, and each application for renewal shall be made annually on or before December 1 of each year. A license may be renewed by the filing of an application substantially conforming to the requirements of Code Section 7-1-683 as specifically modified in the department's rules and regulation. No investigation fee shall be payable in connection with such renewal application. However, an annual license fee established by rule or regulation of the department to defray the cost of supervision shall be paid with each renewal application and shall not be refunded or prorated. (Code 1981, § 7-1-685, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)

**7-1-686. Display of license; license nontransferable and nonassignable; notification of additional locations.**

(a) A license issued pursuant to this article shall be kept conspicuously posted in the place of business of the licensee. If the licensee has no physical location in this state, then a copy of such license and the licensee's unique identifier shall be clearly posted and accessible through whichever medium the licensee engages in the sale of payment instruments or money transmission in this state.

(b) Such license shall not be transferable or assignable.

(c) No licensee shall engage in the sale of payment instruments or money transmissions under any name or names other than those authorized by the department in writing.

(d) A licensee shall give written notice to the department of its intent to operate any new or additional locations, including, but not limited to,

locations operated by an authorized agent, not reported in either its original or renewal application. The required notice shall be provided to the department no later than 30 days after the licensee or authorized agent engages in the sale of payment instruments or money transmission at any new or additional locations. (Code 1981, § 7-1-686, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)

**7-1-687. Notice of action against licensee by creditor or claimant; other notification requirements.**

(a) A licensee shall give written notice to the department by registered or certified mail of any action which may be brought against it by any creditor or claimant where such action relates to the activities authorized under this article or involves a claim against the bond filed with the department under Code Section 7-1-683.2. The notice shall provide details sufficient to identify the action and shall be sent within 30 days after the commencement of any such action. The licensee shall also give notice to the department by registered or certified mail within 30 days of the entry of any judgment which may be entered against the licensee.

(b) The corporate surety shall, within ten days after it pays any claim to any creditor or claimant, give notice to the department by registered or certified mail of such payment with details sufficient to identify the claimant or creditor and the claim or judgment so paid. Whenever the principal sum of such bond is reduced by one or more recoveries or payments thereon, the licensee shall furnish a new or additional bond so that the total or aggregate principal sum of such bond or bonds shall equal the sum required under Code Section 7-1-683.2 or shall furnish an endorsement duly executed by the corporate surety reinstating the bond to the required principal sum thereof.

(c) A bond filed with the department for the purpose of compliance with Code Section 7-1-683.2 shall not be canceled by either the licensee or the corporate surety except upon notice to the department by registered or certified mail or statutory overnight delivery, return receipt requested, and such cancellation shall be effective no sooner than 30 days after receipt by the department of such notice and only with respect to any breach of condition occurring after the effective date of such cancellation.

(d) A licensee shall give written notice to the department by registered or certified mail within ten days of the following:

(1) Any knowledge or discovery of an act prohibited by Code Section 7-1-684 or 7-1-691 or subsection (a) of Code Section 7-1-692;

(2) The discharge of any employee for actual or suspected misrepresentations, dishonest acts, or fraudulent acts;

(3) Any knowledge or discovery of the discharge of a covered employee or an authorized agent for actual or suspected misrepresentations, dishonest acts, or fraudulent acts;

(4) Any knowledge or discovery of an administrative, civil, or criminal action initiated by any government entity against the licensee or an authorized agent, any director, officer, partner, or ultimate equitable owner of the licensee or authorized agent, or any individual who directs the affairs of or controls or establishes policy for the licensee or authorized agent; or

(5) The filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Sections 101 through 110, for bankruptcy reorganization or the filing of a petition by or against the licensee for receivership or the making of a general assignment for the benefit of its creditors. (Code 1981, § 7-1-687, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)

**7-1-688. Approval required of new ultimate equitable owner, other change of control, or executive officer of licensee; denial of application.**

(a) Except as provided in this Code section, no person shall become an ultimate equitable owner of any licensee through acquisition or other change in control or become an executive officer of a licensee unless the person has first received written approval for such acquisition, change in control, or designation as an executive officer from the department. In order to obtain such approval, such person shall:

(1) File an application with the department in such form as the department may prescribe from time to time;

(2) Provide such other information as the department may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors and executive officers, if a corporation, and its members, if applicable, and of any proposed new directors, executive officers, members, or ultimate equitable owners of the licensee; and

(3) Pay such application fee as the department may prescribe.

(b) The department may prescribe additional requirements for approval of such acquisition, change in control, or designation as an executive officer through rules and regulations.

(c) If the application is denied, the department shall notify the applicant of the denial and the reasons for the denial. (Code 1981, § 7-1-688, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)



**7-1-689. Record keeping; investigations and examinations by department; subpoenas; confidentiality; limitations on civil liability.**

(a) Each licensee shall make, keep, and use in its business such books, accounts, and records as the department may require to enforce the provisions of this article and the rules and regulations promulgated under it. Each licensee shall preserve such books, accounts, and records for five years or such greater period of time as prescribed in the department's rules and regulations.

(b) Records required to be made, kept, and preserved pursuant to subsection (a) of this Code section may be maintained in a photographic, electronic, or other similar form.

(c) Records required to be made, kept, and preserved pursuant to subsection (a) of this Code section may be maintained at a location outside of this state so long as such records are produced to the commissioner at the department's main office within ten days of the date of a written request by the department to the licensee.

(d) The department shall investigate and examine the affairs, business, premises, and records of any licensee or authorized agent pertaining to the sale of payment instruments or money transmission. The department may conduct such investigations or examinations at least once every 24 months. The department may accept examination reports performed and produced by other state or federal agencies in satisfaction of this requirement unless the department determines that the examinations are not available or do not provide information necessary to fulfill the responsibilities of the department under this article.

(e) Notwithstanding subsection (d) of this Code section, the department may alter the frequency or scope of investigations or examinations through rules or regulations prescribed by the department. In addition, if the department determines that based on the records submitted to the department and past history of operations of the licensee in the state such investigations or examinations are unnecessary, then the department may waive such investigations and examinations.

(f) In addition to any other authority set forth under this article, the department shall be authorized to conduct investigations and examinations of applicants, licensees, and authorized agents as follows:

(1) The department shall have the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including, but not limited to:

(A) Criminal, civil, and administrative history information, including nonconviction data;

(B) Personal history and experience information, including, but not limited to, independent credit reports obtained from a consumer reporting agency described in the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681a; and

(C) Any other documents, information, or evidence the department deems relevant to the inquiry, examination, or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence;

(2) The department may review, investigate, or examine any licensee or person subject to this article as often as necessary in order to carry out the purposes of this article;

(3) Each licensee or person subject to this article shall make available to the department, upon request, any books and records relating to the activities of selling payment instruments or the transmission of money;

(4) No licensee or person subject to investigation or examination under this article shall knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, documents, files, computer records, evidence or other information; and

(5) In order to carry out the purposes of this Code section, the department may:

(A) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, documents, records, information, or evidence or by utilizing standardized or uniform methods or procedures;

(B) Accept and rely on examination or investigation reports made by other government officials within or outside this state; and

(C) Accept audit reports or portions of audit reports made by an independent certified public accountant on behalf of the licensee or person subject to this article covering the same general subject matter as the audit and may incorporate the audit report in the report of examination, report of investigation, or other writing of the department.

(g) Each licensee shall pay an examination fee as established by the rules and regulations of the department to cover the cost of an examination or investigation.

(h) The department, in its discretion, may:

(1) Make such public or private examination or investigation within or outside of this state as it deems necessary to determine

whether any person has violated this article, any rule or regulation, or order issued under this article, to aid in the enforcement of this article, or to assist in the prescribing of rules and regulations pursuant to this article;

(2) Require or permit any person to file a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the matter to be investigated;

(3) Request any financial data from an applicant or licensee; and

(4) Conduct an on-site examination of a licensee or authorized agent at any location of the licensee or authorized agent without prior notice to the licensee or authorized agent. The licensee shall pay all reasonably incurred costs of the examination when the department examines the operations of its authorized agent. The department is authorized to net its out-of-state travel expenses incurred as a result of an examination or investigation of a licensee or authorized agent against the payment from the licensee.

(i) For the purpose of conducting any examination or investigation as provided in this Code section, the department shall have the power to administer oaths, to call any party to testify under oath in the course of such examinations or investigations, to require the attendance of witnesses, to require the production of books, accounts, records, documents, and papers, and to take the depositions of witnesses; and for such purposes the department is authorized to issue a subpoena for any witness or for the production of documentary evidence. Such subpoenas may be served by certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address or by examiners appointed by the department or shall be directed for service to the sheriff of the county where such witness resides or is found or where the person in custody of any books, accounts, records, documents, or papers resides or is found.

(j) The department may issue and apply to enforce subpoenas in this state at the request of any government agency, department, organization, or entity regulating the sale of payment instruments or money transmission in another state if the activities constituting the alleged violation for which the information is sought would be a violation of this article if the alleged activities had occurred in this state.

(k) In case of refusal to obey a subpoena issued under this article to any person, a superior court of appropriate jurisdiction, upon application by the department, may issue to the person an order requiring him or her to appear before the court to show cause why he or she should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished as contempt by the court.

(l) Examinations and investigations conducted under this article and information obtained by the department in the course of its duties



under this article are confidential, except as provided in this subsection, pursuant to the provisions of Code Section 7-1-70. In addition to the exceptions set forth in subsection (b) of Code Section 7-1-70, the department is authorized to share information obtained under this article with other state and federal regulatory agencies or law enforcement authorities. In the case of such sharing, the safeguards to confidentiality already in place within such agencies or authorities shall be deemed adequate. The commissioner or an examiner specifically designated may disclose such information as is necessary to conduct a civil or administrative investigation or proceeding. Information contained in the records of the department that is not confidential and may be made available to the public either on the department's website or upon receipt by the department of a written request shall include:

- (1) The name, business address, and telephone, fax, and license numbers of a licensee;
  - (2) The names and titles of the principal officers;
  - (3) The name of the owner or owners thereof;
  - (4) The business address of a licensee's registered agent for service;
  - (5) The name, business address, telephone number, and fax number of all locations of a licensee;
  - (6) The name, business address, telephone number, and fax number of all authorized agents;
  - (7) The terms of or a copy of any bond filed by a licensee;
  - (8) Information concerning any violation of this article, any rule or regulation, or order issued under this article, provided that the information is derived from a final order of the department; and
  - (9) Imposition of an administrative fine or penalty under this article.
- (m) The authority to conduct an examination or investigation as provided for in this Code section shall remain in effect whether such licensee or person acts or claims to act under any licensing or registration law of this state or claims to act without such authority.
- (n) In the absence of malice, fraud, or bad faith, a person is not subject to civil liability arising out of furnishing the department with information required by this article or required by the department under the authority granted in this article. No civil cause of action of any nature shall arise against such person:

(1) For any information relating to suspected prohibited conduct furnished to or received from law enforcement officials, their agents, or employees or to or from other regulatory or licensing authorities;

(2) For any such information furnished to or received from other persons subject to the provisions of this article; or

(3) For any information furnished in complaints filed with the department.

(o) The commissioner or any employee or agent of the department shall not be subject to civil liability, and no civil cause of action of any nature shall exist against such persons arising out of the performance of activities or duties under this article or by publication of any report of activities under this Code section. (Code 1981, § 7-1-689, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)

#### **7-1-690. Enforcement.**

Without limiting the power conferred by Article 1 of this chapter, the department may make reasonable rules and regulations, not inconsistent with law, for the interpretation and enforcement of this article. (Code 1981, § 7-1-690, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)

#### **7-1-691. Prohibited activities while engaged in sale of checks or money transmission.**

It shall be prohibited for any person engaged in the sale of checks or money transmission in this state, including any person required to be licensed under this article, to:

(1) Sell payment instruments as an agent of a principal seller who is not exempt from the licensure requirements under Code Section 7-1-682 and has not obtained a license hereunder, and any person who does so shall be deemed to be the principal seller thereof and not merely an agent and shall be liable to the payment instrument holder or remitter as the principal seller;

(2) Receive, transmit, or handle monetary value on behalf of another or issue a payment instrument and not be exempt from licensure under Code Section 7-1-682, and any person who does so shall be liable to the payment instrument holder for the payment thereof to the same extent as a drawer of a negotiable instrument, whether or not the payment instrument is a negotiable instrument under Article 3 of Title 11;

(3) Fail to transmit moneys received within five business days of receiving such moneys; or

(4) Engage in any activity that would subject a licensee to suspension or revocation of its license under this article or any activity that the department may prohibit pursuant to rule or regulation, whether or not the person has a license. (Code 1981, § 7-1-691, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)

**7-1-692. Suspension or revocation of license; failure to issue license; grounds; administrative review.**

(a) The department may suspend or revoke an original or renewal license issued pursuant to this article or rescind the authorization to act as an authorized agent of a licensee if it finds that any ground or grounds exist which would require or warrant the refusal of an application for the issuance or renewal of a license or the authorization to act as an authorized agent of a licensee if such an application or notification were then before it. The department may also deny an application, suspend or revoke an original or renewal license issued pursuant to this article, or rescind the authorization to act as an authorized agent of a licensee if it finds that the licensee or the authorized agent has:

(1) Committed any fraud, engaged in any dishonest activities, or made any misrepresentation;

(2) Violated any provisions of this article, any rule or regulation issued pursuant thereto, any order issued by the department, or any other law in the course of its dealings as a licensee or authorized agent;

(3) Made a false statement in an original or renewal application for licensure or failed to give a true reply to a question in an original or renewal application;

(4) Demonstrated incompetency or untrustworthiness to act as a licensee or authorized agent;

(5) Failed to pay, within 30 days after it becomes final, a judgment recovered in any court by a claimant or creditor in an action arising out of the licensee's business in this state of engaging in the sale of payment instruments or money transmission;

(6) Purposely withheld, deleted, destroyed, or altered information requested by an examiner of the department or made false statements or misrepresentations to the department; or

(7) Operated in an unsafe or unsound manner.

(b) The department shall not issue a license to an applicant, may rescind the authorization to act as an authorized agent of a licensee, and may revoke a license if such applicant, licensee, or authorized



agent is subject to or employs any person subject to a final cease and desist order that has been issued within the preceding five years if such order was based on a violation of this article. Each applicant or licensee shall, before hiring a covered employee, examine the department's public records to determine that such covered employee is not subject to a cease and desist order.

(c) The department shall not issue a license to an applicant, may rescind the authorization to act as an authorized agent of a licensee, and may revoke a license if such applicant, licensee, or authorized agent is subject to or employs any person whose license issued pursuant to this article was revoked within the preceding five years. Each applicant or licensee shall, before hiring a covered employee, examine the department's public records to determine that such covered employee's license was not revoked.

(d) The department shall not issue a license to an applicant, may rescind the authorization to act as an authorized agent of a licensee, and may revoke a license if it finds that any person who is a director, officer, partner, ultimate equitable owner of the applicant, licensee, or authorized agent or any individual who directs the affairs of or controls or establishes policy for the applicant, licensee, or authorized agent has been in one or more of those roles as a licensee whose application has been denied or license revoked or suspended within five years of the date of the application.

(e) Notice of the department's intention to enter an order denying an application for a license, rescinding the authorization to act as an authorized agent of a licensee, or suspending or revoking a license shall be given to the applicant, authorized agent, or licensee in writing, sent by registered or certified mail or statutory overnight delivery addressed to the principal place of business of such applicant, authorized agent, or licensee. If a person refuses to accept service of the notice by registered or certified mail or statutory overnight delivery, the notice or order shall be served by the commissioner or the commissioner's authorized representative under any other method of lawful service, and the person shall be personally liable to the commissioner for a sum equal to the actual costs incurred to serve the notice or order. This liability shall be paid upon notice and demand by the commissioner or the commissioner's representative and shall be assessed and collected in the same manner as other fees or fines administered by the commissioner. Within 20 days of the date of the notice of intention to enter an order of denial, suspension, revocation, or rescission under this article, the applicant, authorized agent, or licensee may request in writing a hearing to contest the order. If a hearing is not requested in writing within 20 days of the date of such notice of intention, the department shall enter a final order regarding the denial, suspension, or revocation. Any final order of

the department denying an application, suspending or revoking a license, or rescinding authorization to act as an authorized agent shall state the grounds upon which it is based and shall be effective on the date of issuance. A copy thereof shall be forwarded promptly by mail addressed to the principal place of business of such applicant, authorized agent, or licensee.

(f) A decision by the department denying an application for license or of an order suspending or revoking a license shall be subject to review in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.”

(g) Whenever the department initiates an administrative action against a current licensee or an applicant, the department may pursue such action to its conclusion despite the fact that a licensee may withdraw or fail to renew its license or an applicant may withdraw its application.

(h) The suspension or revocation of a license under this Code section does not alter, ameliorate, or void a licensee’s duties or liabilities under any existing contract entered into by the licensee prior to such suspension or revocation.

(i) The provisions of this Code section shall not apply when an application for a license is denied or a license is suspended as provided in Code Section 7-1-693. (Code 1981, § 7-1-692, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)

**7-1-693. Applicant or licensee as borrower in default; failure to pay child support prohibits licensure.**

(a) Where an applicant or licensee has been found to be a borrower in default, as defined in Code Section 20-3-295, such action shall be sufficient grounds for refusal of a license or suspension of a license. In such actions, the hearing and appeal procedures provided for in said Code section shall be the only procedures required under this article. The department shall be permitted to share, without liability, information on its applications or other forms with appropriate state agencies to assist them in collecting outstanding student loan debt.

(b) Where an applicant or licensee has been found not in compliance with an order for child support as provided in Code Section 19-6-28.1 or 19-11-9.3, such action shall be sufficient grounds for refusal of a license or suspension of a license. In such actions, the hearing and appeal procedures provided for in Code Section 19-6-28.1 or 19-11-9.3 shall be the only such procedures required under this article. The department shall be permitted to share, without liability, information on its applications or other forms with appropriate state agencies to assist

them in recovering child support when required by law. (Code 1981, § 7-1-693, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)

**7-1-694. Cease and desist orders from unauthorized activities; civil penalties for violations; judicial review; administrative fines.**

(a) The department may issue an order requiring a person to cease and desist immediately from unauthorized activities whenever it shall appear to the department that:

(1) Except as provided in paragraphs (2) and (3) of this subsection, a person has violated any law of this state or any order or regulation of the department, and such cease and desist order shall be final 20 days after it is issued unless the person to whom it is issued makes a written request within such 20 day period for a hearing;

(2) A person not licensed under this article is engaging in or has engaged in activities requiring licensure under this article, which such cease and desist order shall be final 30 days from the date of issuance, and there shall be no opportunity for an administrative hearing. If the proper license or evidence of exemption is obtained within the 30 day period, the order shall be rescinded by the department; or

(3) A person licensed under this article has received a notice of bond cancellation under Code Section 7-1-687, which such cease and desist order shall be final 30 days from the date of issuance, and there shall be no opportunity for an administrative hearing. In the event the cease and desist order becomes final, the license shall expire, and if a new license is desired, the licensee shall be required to make a new application for a license and pay all applicable fees as if it had never been licensed. If the required surety bond is reinstated or replaced and such documentation is delivered to the department within the 30 day period following the date of issuance of the order, the order shall be rescinded.

(b) The cease and desist order shall be in writing, sent by registered or certified mail or statutory overnight delivery, and addressed to the person's business address and, if the person is an individual, to the individual's personal address. Any cease and desist order sent to a person at its business address and, if an individual, his or her personal address that is returned to the department as "refused" or "unclaimed" shall be deemed as received and lawfully served.

(c) Any hearing authorized under paragraph (1) of subsection (a) of this Code section shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."



(d) Whenever a person shall fail to comply with the terms of a final order or decision of the department issued pursuant to this article, the department may, through the Attorney General and upon notice of three days to such person, petition the principal court for an order directing such person to obey the order of the department within the period of time as shall be fixed by the court. Upon the filing of such petition, the court shall allow a motion to show cause why it should not be granted. After a hearing upon the merits or after failure of such person to appear when ordered, the court shall grant the petition of the department upon a finding that the order of the department was properly issued.

(e) Any person who violates the terms of any final order or decision issued pursuant to this article shall be liable for a civil penalty not to exceed \$1,000.00. Each day the violation continues shall constitute a separate offense. In determining the amount of penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of such person, the good faith efforts of such person to comply with the order, the gravity of the violation, the history of previous violations by such person, and such other factors or circumstances as shall have contributed to the violation. The department may at its discretion compromise, modify, or refund any penalty which is subject to imposition or has been imposed pursuant to this Code section. Any person assessed as provided in this subsection shall have the right to request a hearing into the matter within ten days after notification of the assessment has been served upon the licensee involved; otherwise, such penalty shall be final except as to judicial review as provided in Code Section 7-1-90.

(f) Judicial review of any final order or decision of the department entered pursuant to this article shall be available solely in the superior court of the county of domicile of the department.

(g) In addition to any other administrative penalties authorized by this article, the department may, by rule or regulation, prescribe administrative fines for violations of this article and any rules and regulations promulgated by the department pursuant to this article. (Code 1981, § 7-1-694, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)

### **7-1-695. Liability for payment.**

Every payment instrument issued in the conduct of the business regulated by this article shall be signed by the licensee or its authorized agent, and the licensee shall be liable for the payment thereof to the same extent as a drawer of a negotiable instrument, whether or not the payment instrument is a negotiable instrument under Article 3 of Title 11. (Code 1981, § 7-1-695, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)

**7-1-696. Penalties for violations.**

Any person, partnership, association, or corporation and the several members, officers, directors, agents, ultimate equitable owners, and employees thereof that shall violate any of the provisions of this article shall be guilty of a misdemeanor, which shall be punishable by imprisonment for not more than one year or by a fine of not more than \$500.00, or by both such fine and imprisonment. (Code 1981, § 7-1-696, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)

**7-1-697. No limitation on common law liability or state prosecution.**

Nothing in this article shall limit any statutory or common law right of any person to bring any action in any court for any act involved in the cashing of payment instruments or the right of the state to punish any person for any violation of any law. (Code 1981, § 7-1-697, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)

**7-1-698. Continuing effectiveness of existing licenses.**

Every license in force and effect under Article 4 of Chapter 1 of this title, relating to sale of checks and money orders, on July 1, 2014, shall remain in full force and effect on July 1, 2014, and all such existing licensees shall be required to renew their licenses pursuant to Code Section 7-1-685. (Code 1981, § 7-1-698, enacted by Ga. L. 2014, p. 251, § 1/HB 982.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2014, “July 1, 2014” was substituted for “the date of enactment of this article” and “July 1, 2014” was substituted for “the effective date of this article” in this Code section.

**ARTICLE 4A****CASHING OF PAYMENT INSTRUMENTS**

**Effective date.** — This article became effective July 1, 2014.

**Editor’s notes.** — Ga. L. 2014, p. hb0982, § 1/HB 982, effective July 1, 2014, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of Code Section 7-1-700 through 7-1-707, 7-1-707.1 through 7-1-707.3, 7-1-708 through 7-1-709, relating to cashing checks, drafts, or money orders for consideration, and was based on Ga. L. 1990, p. 739, § 1; Ga. L. 1991, p. 94, § 7;

Ga. L. 1991, p. 720, § 1; Ga. L. 1991, p. 784, § 1; Ga. L. 1994, p. 1780, §§ 4-5; Ga. L. 1995, p. 673, §§ 29-30; Ga. L. 1997, p. 485, §§ 25-27; Ga. L. 1998, p. 1094, §§ 2-3; Ga. L. 1999, p. 674, § 27; Ga. L. 2000, p. 174, §§ 19-21; Ga. L. 2000, p. 1589, § 3; Ga. L. 2002, p. 1220, § 10; Ga. L. 2003, p. 643, § 1; Ga. L. 2004, p. 458, § 8; Ga. L. 2007, p. 502, § 25/SB 70 — 32/SB 70; Ga. L. 2009, p. 86, §§ 15/HB 141 — 17/HB 141; Ga. L. 2010, p. 878, § 7/HB 1387.

**7-1-700. Definitions.**

As used in this article, the term:

(1) “Cash payment instruments” or “cashing payment instruments” means to accept a payment instrument from a person in exchange for monetary value less a fee.

(2) “Check” means any check, money order, draft, or negotiable demand instrument.

(3) “Check casher” means an individual, partnership, association, or corporation engaged in cashing payment instruments for a fee.

(4) “Closed-loop transaction” means a transaction where the value or credit is primarily intended to be redeemed for a limited universe of goods, intangibles, services, or other items provided by the issuer of the payment instrument, its affiliates or agents, or others involved in the transaction functionally related to the issuer or its affiliates or agents.

(5) “Commissioner” means the commissioner of banking and finance.

(6) “Control,” “controlling,” “controlled by,” and “under common control with” means the direct or indirect possession of power to direct or cause the direction of management and policies of a person.

(7) “Covered employee” means any employee of a licensee engaged in any function related to cashing payment instruments.

(8) “Department” means the Department of Banking and Finance.

(9) “Executive officer” means the chief executive officer, president, chief financial officer, chief operating officer, each vice president with responsibility involving policy-making functions for a significant aspect of a person’s business, secretary, treasurer, or any other person performing similar managerial or supervisory functions with respect to any organization, whether incorporated or unincorporated.

(10) “Fee” means a service charge, benefit, or other consideration, which includes, but is not limited to, cash, the exchange of value in excess of regular retail value, mandatory purchase of goods or services by patrons, or the purchase of catalogue items or coupons or other items indicating the ability to receive goods, services, or catalogue items.

(11) “Individual” means a natural person.

(12) “Licensee” means a person, including, but not limited to, a check casher, duly licensed under this article to accept payment instruments and exchange them for monetary value for a fee.



(13) “Misrepresent” means to make a false statement of a substantive fact. The term may also mean to engage in any conduct which leads to a false belief which is material to the transaction.

(14) “Monetary value” means a medium of exchange, whether or not redeemable in money.

(15) “Nation-wide Multistate Licensing System and Registry” means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of certain persons engaged in nondepository activities.

(16) “Open-loop transaction” means a transaction using a payment instrument with stored value to redeem for goods or services at any location that accepts such payment instrument.

(17) “Payment instrument” means any instrument, order, or device for the payment or transmission of money or monetary value, whether or not it is a negotiable instrument under the terms of Article 3 of Title 11, relating to negotiable instruments. The term includes, but is not limited to, checks, money orders, drafts, stored value cards, and open-loop transactions. The term does not include closed-loop transactions, credit card vouchers, letters of credit, or any instrument that is redeemable by the issuer only in specific goods or services of the issuer.

(18) “Person” means any individual, sole proprietorship, corporation, limited liability company, partnership, trust, or any other group of individuals, however organized.

(19) “Stored value” means monetary value that is evidenced by an electronic record.

(20) “Ultimate equitable owner” means a person that:

(A) Owns, directly or indirectly, a 10 percent or more interest in a corporation or any other form of business organization;

(B) Owns, directly or indirectly, 10 percent or more of the voting shares of any corporation or any other form of business organization; or

(C) Exerts control, directly or indirectly, over a corporation or any other form of business organization, regardless of whether such person owns or controls such interest through one or more natural persons or one or more proxies, powers of attorney, nominees, corporations, associations, limited liability companies, partnerships, trusts, joint stock companies, other entities or devices, or any combination thereof.

(21) "Unique identifier" means a number or other identifier assigned by protocols established by the Nation-wide Multistate Licensing System and Registry. (Code 1981, § 7-1-700, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

### **7-1-701. Licensing for cash payment instruments.**

(a) Pursuant to this article, the department may license a person to cash payment instruments.

(b) No person shall cash payment instruments without first obtaining a license under this article.

(c) Every person that directly or indirectly controls another person that violates subsection (b) of this Code section, each general partner, executive officer, joint venture, ultimate equitable owner, or director of such person, and every person occupying a similar status or performing similar functions as such person violates with and to the same extent as such person. Any person who directly or indirectly controls a person who violates subsection (b) of this Code section may avoid liability if such person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of the existence of the facts by reason of which the original violation is alleged to exist. (Code 1981, § 7-1-701, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

### **7-1-701.1. Exemption from licensing requirements.**

The requirement for licensure set forth in this article shall not apply to:

(1) Any state or federally chartered bank, trust company, credit union, savings and loan association, or savings bank with deposits that are federally insured;

(2) The United States Postal Service;

(3) A state or federal governmental department, agency, authority, or instrumentality and its agents;

(4) Any foreign bank that establishes a federal branch pursuant to the International Bank Act, 12 U.S.C. Section 3102;

(5) Any person who accepts a payment instrument from a person in exchange for monetary value but does not charge a fee; or

(6) An individual employed by a licensee or any person exempted from the licensing requirements of this article when acting within the scope of employment and under the supervision of the licensee or exempted person as an employee and not as an independent contrac-

tor. (Code 1981, § 7-1-701.1, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

### **7-1-702. Requirements for licensure.**

(a) Each applicant for a license under this article shall:

(1) Submit an application in writing, which is made under oath and in such form as the department may prescribe;

(2) Furnish to the Nation-wide Multistate Licensing System and Registry the following information:

(A) The legal name and principal office address of the person applying for the license;

(B) The name, residence, and business address of each director, ultimate equitable owner, and executive officer;

(C) If the applicant has one or more branches or other locations at or through which the applicant proposes to cash payment instruments within this state, the complete address of each such location; and

(D) The location where the initial registered office will be located in this state; and

(3) Submit such other data, financial statements, and pertinent information as the department may require with respect to the applicant, its directors, trustees, officers, members, ultimate equitable owners, or agents.

(b) The application for license shall be filed together with:

(1) An investigation and supervision fee established by rule or regulation which shall not be refundable but which, if the license is granted, shall satisfy the fee requirement for the first licensed year or the remaining part thereof;

(2) Items required by other provisions of this article, including but not limited to Code Section 7-1-703 and subsection (c) of Code Section 7-1-707; and

(3) Other information as may be required by the department.

(c) The department shall pay all fees received from licensees and applicants related to applications, licenses, and renewals to the Office of the State Treasurer; provided, however, that the department may net such fees to recover the cost of participation in the Nation-wide Multistate Licensing System and Registry.

(d) The department shall enact rules and regulations regarding the time frame by which all persons must submit an original or renewal



application for licensure through the Nation-wide Multistate Licensing System and Registry. (Code 1981, § 7-1-702, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

**7-1-702.1. Operation of mobile payment instrument cashing facility.**

A mobile payment instrument cashing facility operated by a licensee shall be treated as a branch location and the operations of the facility shall be conducted in accordance with the rules and regulations of the department. (Code 1981, § 7-1-702.1, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

**7-1-702.2. Authority of department.**

(a) The department is authorized to:

(1) Participate in the Nation-wide Multistate Licensing System and Registry in order to facilitate the sharing of information and standardization of the licensing and application processes for persons subject to this article;

(2) Enter into operating agreements, information sharing agreements, interstate cooperative agreements, and other contracts necessary for the department's participation in the Nation-wide Multistate Licensing System and Registry;

(3) Disclose or cause to be disclosed without liability, via the Nation-wide Multistate Licensing System and Registry, applicant and licensee information, including, but not limited to, violations of this article and enforcement actions, to facilitate regulatory oversight;

(4) Request that the Nation-wide Multistate Licensing System and Registry adopt an appropriate privacy, data security, and security breach notification policy that is in full compliance with existing state and federal law; and

(5) Establish and adopt, by rule and regulation, requirements for participation by applicants and licensees in the Nation-wide Multistate Licensing System and Registry, upon the department's determination that each requirement is consistent with both the public interest and purposes of this article.

(b) The department shall enact rules and regulations establishing a process whereby licensees may challenge information entered by the department into the Nation-wide Multistate Licensing System and Registry.

(c) Irrespective of its participation in the Nation-wide Multistate Licensing System and Registry, the department shall retain full and exclusive authority over determinations of whether to grant, renew, suspend, or revoke licenses issued under this article. Nothing in this Code section shall be construed to reduce or otherwise limit such authority.

(d) Information disclosed through the Nation-wide Multistate Licensing System and Registry is deemed to be disclosed directly to the department and subject to Code Section 7-1-70. Such information shall not be disclosed to the public and shall remain privileged and confidential pursuant to Code Section 7-1-70. (Code 1981, § 7-1-702.2, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

### **7-1-703. Investigation of applicants; background checks of employees.**

(a) The department shall conduct an investigation of every applicant for licensure to determine the financial responsibility, experience, character, and general fitness of such applicant. The department may issue the applicant a license to cash payment instruments if the department determines to its general satisfaction that:

(1) The applicant is financially sound and responsible and able to cash payment instruments in an honest, fair, and efficient manner and with the confidence and trust of the community; and

(2) All conditions for licensure set forth in this article or the rules and regulations of the department have been satisfied.

(b) The department shall not issue a license or may revoke a license if it finds that the applicant or licensee, any person who is a director, officer, partner, agent, covered employee, or ultimate equitable owner of the applicant or licensee, or any individual who directs the affairs of or controls or establishes policy for the applicant or licensee has been convicted of a felony in any jurisdiction or of a crime which, if committed within this state, would constitute a felony under the laws of this state. For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty or nolo contendere to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered or an adjudication or sentence was otherwise withheld or not entered on that charge, unless and until such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial

process or until probation, sentence, or both probation and sentence of a first offender have been successfully completed and documented or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction occurred or shall have received an official certification of pardon granted by the state's pardoning body where the conviction occurred which removes the legal disabilities resulting from such conviction and restores civil and political rights.

(c) The department shall be authorized to obtain conviction data with respect to any applicant or licensee, any person who is a director, officer, partner, agent, covered employee, or ultimate equitable owner of the applicant or licensee, or any individual who directs the affairs of or controls or establishes policy for the applicant or licensee. The department may submit directly to the Georgia Crime Information Center two complete sets of fingerprints of such person, together with the required records search fees and such other information as may be required. Fees for background checks that the department administers shall be sent to the department by applicants and licensees together with the fingerprints.

(d) Upon request by the department, each applicant, licensee, any person who is a director, officer, partner, agent, covered employee, or ultimate equitable owner of the applicant or licensee, or any individual who directs the affairs of or controls or establishes policy for the applicant or licensee shall submit to the department two complete sets of fingerprints, the required records search fees, and such other information as may be required. Fees for background checks that the department administers shall be submitted to the department by applicants or licensees together with two complete sets of fingerprints, and the department is authorized to net such fees to recover any costs incurred by the department related to running the background checks. Upon receipt of fingerprints, fees, and other required information, the Georgia Crime Information Center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check, or if there is no such finding. All conviction data received by the department or by the applicant or licensee shall be used by the party requesting such data for the exclusive purpose of carrying out the responsibilities of this article, shall not be a public record, shall be confidential, and shall not be disclosed to any other person or agency except to any person or agency which otherwise has a legal right to



inspect such data. All such records shall be maintained by the department and the applicant or licensee pursuant to laws regarding such records and the rules and regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as applicable. As used in this Code section, "conviction data" means a record of a finding, verdict, or plea of guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(e) Every applicant and licensee shall be authorized and required to obtain and maintain the results of background checks on covered employees. Such background checks shall be handled by the Georgia Crime Information Center pursuant to Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information Center. Applicants and licensees shall be responsible for any applicable fees charged by the Georgia Crime Information Center. An applicant or licensee may only employ a person whose background data has been checked and has been found to be in compliance with all lawful requirements prior to the initial date of hire. This provision does not apply to directors, officers, partners, or ultimate equitable owners of applicants or licensees or to persons who direct the affairs of or control or establish policy for applicants or licensees, whose background shall have been investigated through the department before taking office, beginning employment, or securing ownership. Upon receipt of information from the Georgia Crime Information Center that is incomplete or that indicates a covered employee has a criminal record in any state other than Georgia, the employer shall submit to the department two complete sets of fingerprint cards for such person, together with the applicable fees and any other required information. The department shall submit such fingerprints as provided in subsection (d) of this Code section.

(f) Applicants and licensees shall have the primary responsibility for obtaining background checks on covered employees. The department shall be entitled to review the files of any applicant or licensee to determine whether the required background checks have been run and whether all covered employees are qualified. The department shall be authorized to discuss the status of employee background checks with applicants and licensees. Notwithstanding any other provisions in this article, the department shall retain the right to obtain conviction data on covered employees of applicants and licensees.

(g) The department may use the Nation-wide Multistate Licensing System and Registry as a channeling agent for requesting information from and distributing information to the United States Department of Justice, any governmental agency, or any source so directed by the department. (Code 1981, § 7-1-703, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

**7-1-703.1. Reporting on condition to Nation-wide Multistate Licensing System and Registry.**

Each licensee shall submit to the Nation-wide Multistate Licensing System and Registry timely reports of condition, which shall be in such form and shall contain such information as the department and the Nation-wide Multistate Licensing System and Registry may require. (Code 1981, § 7-1-703.1, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

**7-1-703.2. Use of unique identifier of licensee.**

The unique identifier of any licensee shall be clearly labeled on all advertisements and any other documents required by rule or regulation of the department. (Code 1981, § 7-1-703.2, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

**7-1-704. Renewal of licenses.**

Except as otherwise specifically provided in this article, all licenses issued pursuant to this article shall expire on December 31 of each year, and each application for renewal shall be made annually on or before December 1 of each year. A license may be renewed by the filing of an application substantially conforming to the requirements of Code Section 7-1-702 and the department's rules and regulations. No investigation fee shall be payable in connection with such renewal application. However, an annual license fee established by rule or regulation of the department to defray the cost of supervision shall be paid with each renewal application and shall not be refunded or prorated. (Code 1981, § 7-1-704, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

**7-1-704.1. Posting of license; license is nontransferable and nonassignable; notification of new facilities.**

(a) A license issued pursuant to this article shall be kept conspicuously posted in the place of business of the licensee.

(b) Such license shall not be transferable or assignable.

(c) No licensee shall cash payment instruments under any name or names other than those authorized by the department in writing.

(d) A licensee shall give written notice to the department of its intent to operate any new or additional locations not reported in either its original or renewal application. The required notice shall be provided to the department no later than 30 days after the licensee first cashed a payment instrument at any new or additional location. (Code 1981, § 7-1-704.1, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

**7-1-705. Written notice of claims against licensee, judgments, or other misconduct by employees, directors, or others.**

(a) A licensee shall give written notice to the department by registered or certified mail of any action which may be brought against it by any creditor or claimant where such action relates to activities authorized under this article or involves a claim against the bond filed with the department under subsection (c) of Code Section 7-1-707. The notice shall provide details sufficient to identify the action and shall be sent within 30 days after the commencement of any such action. The licensee shall also give notice to the department by registered or certified mail within 30 days of the entry of any judgment against the licensee.

(b) A licensee shall give written notice to the department by registered or certified mail within ten days of the following:

(1) Any knowledge or discovery of an act prohibited by Code Section 7-1-703 or 7-1-707 or subsection (a) of Code Section 7-1-708;

(2) The discharge of any employee for actual or suspected misrepresentations, dishonest acts, or fraudulent acts; or

(3) Any knowledge or discovery of an administrative, civil, or criminal action initiated by any government entity against the licensee, any of the licensee's directors, officers, partners, ultimate equitable owners, or any individual who directs the affairs of or controls or establishes policy for the licensee. (Code 1981, § 7-1-705, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

**7-1-705.1. Approval required for change of control or ultimate equitable owner; additional requirements; denial and notification of reasons.**

(a) Except as provided in this Code section, no person shall become an ultimate equitable owner of any licensee through acquisition or other change in control or become an executive officer of a licensee unless the person has first received written approval for such acquisition, change in control, or designation as an executive officer from the department. In order to obtain such approval, such person shall:

(1) File an application with the department in such form as the department may prescribe from time to time;

(2) Provide such other information as the department may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors and executive officers, if a corporation, and its members, if applicable, and of any proposed new



directors, executive officers, members, or ultimate equitable owners of the licensee; and

(3) Pay such application fee as the department may prescribe.

(b) The department may prescribe additional requirements for approval of such acquisition, change in control, or designation as an executive officer through rules and regulations.

(c) If the application is denied, the department shall notify the applicant of the denial and the reasons for the denial. (Code 1981, § 7-1-705.1, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

**7-1-706. Record keeping obligations; investigations and examinations by the department; examination fees; administration of oaths and issuing of subpoenas; confidentiality; civil liability.**

(a) Each licensee shall make, keep, and use in its business such books, accounts, and records as the department may require to enforce the provisions of this article and the rules and regulations promulgated under it. Each licensee shall preserve such books, accounts, and records for five years or such greater period of time as prescribed in the department's rules and regulations.

(b) Records required to be made, kept, and preserved pursuant to subsection (a) of this Code section may be maintained in a photographic, electronic, or other similar form.

(c) Records required to be made, kept, and preserved pursuant to subsection (a) of this Code section may be maintained at a location outside of this state so long as such records are produced to the commissioner at the department's main office within ten days of the date of a written request by the department to the licensee.

(d) The department shall investigate and examine the affairs, business, premises, and records of any licensee pertaining to cashing payment instruments. The department may conduct such investigations or examinations at least once every 24 months. The department may accept examination reports performed and produced by other state or federal agencies in satisfaction of this requirement unless the department determines that the examinations are not available or do not provide information necessary to fulfill the responsibilities of the department under this article.

(e) Notwithstanding subsection (d) of this Code section, the department may alter the frequency or scope of investigations or examinations through rules or regulations prescribed by the department. In addition, if the department determines that based on the records

submitted to the department and past history of operations of the licensee in the state such investigations or examinations are unnecessary, then the department may waive such investigations and examinations.

(f) In addition to any other authority set forth under this article, the department shall be authorized to conduct investigations and examinations of applicants and licensees as follows:

(1) The department shall have the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including, but not limited to:

(A) Criminal, civil, and administrative history information, including nonconviction data;

(B) Personal history and experience information, including, but not limited to, independent credit reports obtained from a consumer reporting agency described in the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681a; and

(C) Any other documents, information, or evidence the department deems relevant to the inquiry, examination, or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence;

(2) The department may review, investigate, or examine any licensee or person subject to this article as often as necessary in order to carry out the purposes of this article;

(3) Each licensee or person subject to this article shall make available to the department, upon request, any books and records relating to the activities of cashing payment instruments;

(4) No licensee or person subject to investigation or examination under this article shall knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, documents, files, computer records, evidence, or other information; and

(5) In order to carry out the purposes of this Code section, the department may:

(A) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, documents, records, information, or evidence or by utilizing standardized or uniform methods or procedures;

(B) Accept and rely on examination or investigation reports made by other government officials within or outside this state; and

(C) Accept audit reports or portions of audit reports made by an independent certified public accountant on behalf of the licensee or

person subject to this article covering the same general subject matter as the audit and may incorporate the audit report in the report of examination, report of investigation, or other writing of the department.

(g) Each licensee shall pay an examination fee as established by the rules and regulations of the department to cover the cost of an examination or investigation.

(h) The department, in its discretion, may:

(1) Make such public or private examination or investigation within or outside of this state as it deems necessary to determine whether any person has violated this article, any rule or regulation, or order issued under this article, to aid in the enforcement of this article, or to assist in the prescribing of rules and regulations pursuant to this article;

(2) Require or permit any person to file a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the matter to be investigated;

(3) Request any financial data from an applicant or licensee; and

(4) Conduct an on-site examination of a licensee at any location of the licensee without prior notice to the licensee.

(i) For the purpose of conducting any examination or investigation as provided in this Code section, the department shall have the power to administer oaths, to call any party to testify under oath in the course of such examinations or investigations, to require the attendance of witnesses, to require the production of books, accounts, records, documents, and papers, and to take the depositions of witnesses; and for such purposes the department is authorized to issue a subpoena for any witness or for the production of documentary evidence. Such subpoenas may be served by certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address or by examiners appointed by the department or shall be directed for service to the sheriff of the county where such witness resides or is found or where the person in custody of any books, accounts, records, documents, or papers resides or is found.

(j) The department may issue and apply to enforce subpoenas in this state at the request of any government agency, department, organization, or entity regulating cashing payment instruments in another state if the activities constituting the alleged violation for which the information is sought would be a violation of this article if the alleged activities had occurred in this state.

(k) In case of refusal to obey a subpoena issued under this article to any person, a superior court of appropriate jurisdiction, upon applica-



tion by the department, may issue to the person an order requiring him or her to appear before the court to show cause why he or she should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished as contempt by the court.

(l) Examinations and investigations conducted under this article and information obtained by the department in the course of its duties under this article are confidential, except as provided in this subsection, pursuant to the provisions of Code Section 7-1-70. In addition to the exceptions set forth in subsection (b) of Code Section 7-1-70, the department is authorized to share information obtained under this article with other state and federal regulatory agencies or law enforcement authorities. In the case of such sharing, the safeguards to confidentiality already in place within such agencies or authorities shall be deemed adequate. The commissioner or an examiner specifically designated may disclose such information as is necessary to conduct a civil or administrative investigation or proceeding. Information contained in the records of the department that is not confidential and may be made available to the public either on the department's website or upon receipt by the department of a written request shall include:

- (1) The name, business address, and telephone, fax, and license numbers of a licensee;
  - (2) The names and titles of the principal officers;
  - (3) The name of the owner or owners thereof;
  - (4) The business address of a licensee's registered agent for service;
  - (5) The name, business address, telephone number, and fax number of all locations of a licensee;
  - (6) The terms of or a copy of any bond filed by a licensee;
  - (7) Information concerning any violation of this article, any rule or regulation, or order issued under this article, provided that the information is derived from a final order of the department; and
  - (8) Imposition of an administrative fine or penalty under this article.
- (m) The authority to conduct an examination or investigation as provided for in this Code section shall remain in effect whether such licensee or person acts or claims to act under any licensing or registration law of this state or claims to act without such authority.
- (n) In the absence of malice, fraud, or bad faith, a person is not subject to civil liability arising out of furnishing the department with

information required by this article or required by the department under the authority granted in this article. No civil cause of action of any nature shall arise against such person:

- (1) For any information relating to suspected prohibited conduct furnished to or received from law enforcement officials, their agents, or employees or to or from other regulatory or licensing authorities;
- (2) For any such information furnished to or received from other persons subject to the provisions of this article; or
- (3) For any information furnished in complaints filed with the department.

(o) The commissioner or any employee or agent of the department shall not be subject to civil liability, and no civil cause of action of any nature shall exist against such persons arising out of the performance of activities or duties under this article or by publication of any report of activities under this Code section. (Code 1981, § 7-1-706, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

#### **7-1-706.1. Regulatory interpretation and enforcement.**

Without limiting the power conferred by Article 1 of this chapter, the department may make reasonable rules and regulations, not inconsistent with law, for the interpretation and enforcement of this article. (Code 1981, § 7-1-706.1, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

#### **7-1-707. Required endorsement by licensee; immediate payments; deferment of payment; identification requirements; acceptable fee for services.**

(a) No licensee shall deposit with any financial institution a payment instrument it has accepted and exchanged for monetary value unless such payment instrument is endorsed by the licensee.

(b) No licensee shall receive any payment instrument with payment deferred pending collection. Payment shall be made immediately in cash for every payment instrument accepted by the licensee and exchanged for monetary value for a fee.

(c) Notwithstanding the provisions of subsection (b) of this Code section, checks may be accepted for collection with payment deferred where the licensee has posted a surety bond in the same manner as prescribed for licensed money transmitters or licensed payment instrument sellers under Code Section 7-1-683.2 and under the same conditions as set forth under Code Section 7-1-687. The surety bond shall be in the aggregate amount of \$10,000.00 for each location operated by the licensee, if the licensee operates three or fewer locations, plus \$5,000.00

per location for the fourth and fifth locations operated by the licensee, plus \$1,000.00 for each location operated by the licensee in excess of the fifth location. The bond shall be in a form satisfactory to the department and shall run to the State of Georgia for the benefit of any claimant against the licensee arising out of the licensee's business of cashing payment instruments with payment deferred in this state. The bond shall not be canceled by either the licensee or the corporate surety except upon notice to the department by registered or certified mail or statutory overnight delivery, return receipt requested, and such cancellation shall be effective no sooner than 30 days after receipt by the department of such notice. In no event shall payment of a check be deferred past the time the licensee has collected on the check. Upon collection, payment shall be made immediately to the party from whom the licensee accepted the check.

(d) No licensee shall cash payment instruments made payable to a payee other than an individual unless such licensee has previously obtained appropriate documentation from the authorized executive officer of such payee clearly indicating the authority of the individual to cash the payment instrument on behalf of the payee.

(e) No licensee shall cash payment instruments without identification of the bearer of such instrument, and any person seeking to cash payment instruments shall be required to submit such reasonable identification as shall be prescribed by the department; provided, however, that the provisions of this subsection shall not prohibit a licensee from cashing payment instruments simultaneously with the verification and establishment of the identity of the presenter by means other than the presentation of identification.

(f) No licensee shall:

(1) Charge a fee for cashing payment instruments in excess of 5 percent of the face amount of the payment instrument or \$5.00, whichever is greater;

(2) Charge a fee for cashing payment instruments in excess of 3 percent of the face amount of the payment instrument or \$5.00, whichever is greater, if such payment instrument is state public assistance or a federal social security benefit made payable to the bearer of such payment instrument; or

(3) Charge a fee for cashing payment instruments in excess of 10 percent of the face amount of the payment instrument or \$5.00, whichever is greater, if such payment instrument is a personal check or money order. For purposes of this subsection, "personal check or money order" means a payment instrument drawn against the account of an individual.

(g) No licensee shall engage in any activity that would subject the licensee to suspension or revocation of its license pursuant to this



article or any activity that the department may prohibit by rule or regulation. (Code 1981, § 7-1-707, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

**7-1-707.1. Posting of fees for cashing payment instruments.**

In every location operated by a licensee, there shall be conspicuously posted and at all times displayed a notice stating the charges for cashing payment instruments. (Code 1981, § 7-1-707.1, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

**7-1-708. Grounds for suspension or revocation of license; employment of individuals subject to cease and desist order; administrative review.**

(a) The department may suspend or revoke an original or renewal license issued pursuant to this article if it finds that any ground or grounds exist which would require or warrant the refusal of an application for the issuance or renewal of a license if such an application were then before it. The department may also deny an application or suspend or revoke an original or renewal license issued pursuant to this article if it finds that the licensee has:

(1) Committed any fraud, engaged in any dishonest activities, or made any misrepresentation;

(2) Violated any provisions of this article, any rule or regulation issued pursuant thereto, any order issued by the department, or any other law in the course of its dealings as a licensee;

(3) Made a false statement in an original or renewal application for licensure or failed to give a true reply to a question in an original or renewal application;

(4) Demonstrated incompetency or untrustworthiness to act as a licensee;

(5) Failed to pay, within 30 days after it becomes final, a judgment recovered in any court by a claimant or creditor in an action arising out of the licensee's business of cashing payment instruments;

(6) Purposely withheld, deleted, destroyed, or altered information requested by an examiner of the department or made false statements or misrepresentations to the department; or

(7) Operated in an unsafe or unsound manner.

(b) The department shall not issue a license to an applicant and may revoke a license if such applicant or licensee is subject to or employs any person subject to a final cease and desist order that has been issued

within the preceding five years if such order was based on a violation of this article. Each applicant or licensee shall, before hiring a covered employee, examine the department's public records to determine that such covered employee is not subject to a cease and desist order.

(c) The department shall not issue a license to an applicant and may revoke a license if such applicant or licensee is subject to or employs any person whose license issued pursuant to this article was revoked within the preceding five years. Each applicant or licensee shall, before hiring a covered employee, examine the department's public records to determine that such covered employee's license was not revoked.

(d) The department shall not issue a license to an applicant and may revoke a license if it finds that any person who is a director, officer, partner, ultimate equitable owner of the applicant or licensee or any individual who directs the affairs of or controls or establishes policy for the applicant or licensee has been in one or more of those roles as a licensee whose application has been denied or license revoked or suspended within five years of the date of the application.

(e) Notice of the department's intention to enter an order denying an application for a license or suspending or revoking a license shall be given to the applicant or licensee in writing, sent by registered or certified mail or statutory overnight delivery addressed to the principal place of business of such applicant or licensee. If a person refuses to accept service of the notice by registered or certified mail or statutory overnight delivery, the notice or order shall be served by the commissioner or the commissioner's authorized representative under any other method of lawful service, and the person shall be personally liable to the commissioner for a sum equal to the actual costs incurred to serve the notice or order. This liability shall be paid upon notice and demand by the commissioner or the commissioner's representative and shall be assessed and collected in the same manner as other fees or fines administered by the commissioner. Within 20 days of the date of the notice of intention to enter an order of denial, suspension, or revocation under this article, the applicant or licensee may request in writing a hearing to contest the order. If a hearing is not requested in writing within 20 days of the date of such notice of intention, the department shall enter a final order regarding the denial, suspension, or revocation. Any final order of the department denying, suspending, or revoking a license shall state the grounds upon which it is based and shall be effective on the date of issuance. A copy thereof shall be forwarded promptly by mail addressed to the principal place of business of such applicant or licensee.

(f) A decision by the department denying an application for license or of an order suspending or revoking a license shall be subject to review in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(g) Whenever the department initiates an administrative action against a current licensee or an applicant, the department may pursue such action to its conclusion despite the fact that a licensee may withdraw or fail to renew its license or an applicant may withdraw its application.

(h) The suspension or revocation of a license under this Code section does not alter, ameliorate, or void a licensee's duties or liabilities under any existing contract entered into by the licensee prior to such suspension or revocation.

(i) The provisions of this Code section shall not apply when an application for a license is denied or a license is suspended as provided in Code Section 7-1-708.1. (Code 1981, § 7-1-708, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

**7-1-708.1. Denial or suspension of license for student borrowers in default or for failing to comply with child support requirements.**

(a) Where an applicant or licensee has been found to be a borrower in default, as defined in Code Section 20-3-295, such action shall be sufficient grounds for denial of an application or suspension of a license. In such actions, the hearing and appeal procedures provided for in said Code section shall be the only procedures required under this article. The department shall be permitted to share, without liability, information on its applications or other forms with appropriate state agencies to assist them in collecting outstanding student loan debt.

(b) Where an applicant or licensee has been found not in compliance with an order for child support as provided in Code Section 19-6-28.1 or 19-11-9.3, such action shall be sufficient grounds for denial of an application or suspension of a license. In such actions, the hearing and appeal procedures provided for in Code Section 19-6-28.1 or 19-11-9.3 shall be the only such procedures required under this article. The department shall be permitted to share, without liability, information on its applications or other forms with appropriate state agencies to assist them in recovering child support. (Code 1981, § 7-1-708.1, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

**7-1-708.2. Issuance of cease and desist orders; administrative and judicial enforcement; penalty for noncompliance.**

(a) The department may issue an order requiring a person to cease and desist immediately from unauthorized activities whenever it shall appear to the department that:

(1) Except as provided in paragraph (2) of this subsection, a person has violated any law of this state or any order or regulation of the



department, and such cease and desist order shall be final 20 days after it is issued unless the person to whom it is issued makes a written request within such 20 day period for a hearing; or

(2) A person not licensed under this article is engaging in or has engaged in activities requiring licensure under this article, which such cease and desist order shall be final 30 days from the date of issuance, and there shall be no opportunity for an administrative hearing. If the proper license or evidence of exemption is obtained within the 30 day period, the order shall be rescinded by the department.

(b) The cease and desist order shall be in writing, sent by registered or certified mail or statutory overnight delivery and addressed to the person's business address and, if the person is an individual, to the individual's personal address. Any cease and desist order sent to a person at its business address and, if an individual, his or her personal address that is returned to the department as "refused" or "unclaimed" shall be deemed as received and lawfully served.

(c) Any hearing authorized under paragraph (1) of subsection (a) of this Code section shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(d) Whenever a person shall fail to comply with the terms of a final order or decision of the department issued pursuant to this article, the department may, through the Attorney General and upon notice of three days to such person, petition the principal court for an order directing such person to obey the order of the department within the period of time as shall be fixed by the court. Upon the filing of such petition, the court shall allow a motion to show cause why it should not be granted. After a hearing upon the merits or after failure of such person to appear when ordered, the court shall grant the petition of the department upon a finding that the order of the department was properly issued.

(e) Any person who violates the terms of any final order or decision issued pursuant to this article shall be liable for a civil penalty not to exceed \$1,000.00. Each day the violation continues shall constitute a separate offense. In determining the amount of penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of such person, the good faith efforts of such person to comply with the order, the gravity of the violation, the history of previous violations by such person, and such other factors or circumstances as shall have contributed to the violation. The department may at its discretion compromise, modify, or refund any penalty which is subject to imposition or has been imposed pursuant to this Code section. Any person assessed as provided in this subsection shall

have the right to request a hearing into the matter within ten days after notification of the assessment has been served upon the licensee involved; otherwise, such penalty shall be final except as to judicial review as provided in Code Section 7-1-90.

(f) Judicial review of any final order or decision of the department entered pursuant to this article shall be available solely in the superior court of the county of domicile of the department.

(g) In addition to any other administrative penalties authorized by this article, the department may, by rule or regulation, prescribe administrative fines for violations of this article and any rules and regulations promulgated by the department pursuant to this article. (Code 1981, § 7-1-708.2, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

### **7-1-709. Penalty for violation of article.**

Any person, partnership, association, or corporation and the several members, officers, directors, agents, ultimate equitable owners, and employees thereof that shall violate any of the provisions of this article shall be guilty of a misdemeanor, which shall be punishable by imprisonment for not more than one year or by a fine of not more than \$500.00, or by both such fine and imprisonment. (Code 1981, § 7-1-709, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

#### **7-1-709.1. No limitation on common law liability or state prosecution.**

Nothing in this article shall limit any statutory or common law right of any person to bring any action in any court for any act involved in cashing payment instruments or the right of the state to punish any person for any violation of any law. (Code 1981, § 7-1-709.1, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

#### **7-1-709.2. Continuing effectiveness of existing licenses.**

Every license in force and effect under Article 4A of Chapter 1 of this title, relating to cashing checks, drafts, or money orders for consideration, on July 1, 2014, shall remain in full force and effect on July 1, 2014, and all such existing licensees shall be required to renew their licenses pursuant to Code Section 7-1-704. (Code 1981, § 7-1-709.2, enacted by Ga. L. 2014, p. 251, § 2/HB 982.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2014, “July 1, 2014,” was substituted for “the date of enactment of this article” and “July 1, 2014” was substituted for “the effective date of this article” in this Code section.

## ARTICLE 8

## MULTIPLE-PARTY ACCOUNTS

**7-1-810. Definitions.**

As used in this article, the term:

(1) “Account” means a contract of deposit of funds between a depositor and a financial institution and includes a checking account, savings account, certificate of deposit, share account, and other like arrangements.

(2) “Beneficiary” means a person named in a trust account as one for whom a party to the account is named as trustee.

(3) “Financial institution” means a savings and loan association as defined in paragraph (31) of Code Section 7-1-4 or any financial institution as defined in paragraph (21) of Code Section 7-1-4.

(4) “Joint account” means an account payable on request to one or more of two or more parties, whether or not mention is made of any right of survivorship.

(5) “Multiple-party account” means any of the following types of account:

- (A) A joint account;
- (B) A P.O.D. account; or
- (C) A trust account.

It does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes; accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, or charitable or civic organization; or a regular fiduciary or trust account where the relationship is established other than by deposit agreement.

(6) “Net contribution” of a party to a multiple-party account as of any given time means the sum of all deposits thereto made by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question.

(7) “Party” means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party



account. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to him by reason of his surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian, conservator, personal representative, or assignee, including an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another, whether or not a beneficiary is named; but it does not include any named beneficiary unless he has a present right of withdrawal.

(8) "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any setoff or reduction or other disposition of all or part of an account pursuant to a pledge.

(9) "Proof of death" includes a death certificate or official record which is prima-facie proof of death.

(10) "P.O.D. account" means an account payable on request to one person during his or her lifetime or to an incorporated entity and on such person's death to one or more P.O.D. payees or to one or more persons during their lifetimes or to an incorporated entity and on the death of all of them or the dissolution of the incorporated entity to one or more P.O.D. payees.

(11) "P.O.D. payee" means a person or an incorporated entity designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons.

(12) "Request" means a proper request for withdrawal or a check or order for payment which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but, if the financial institution conditions withdrawal or payment on advance notice, for purposes of this article the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

(13) "Sums on deposit" means the balance payable on a multiple-party account, including interest, dividends, and, in addition, any deposit life insurance proceeds added to the account by reason of the death of a party.

(14) "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account; it is not essential that payment to the beneficiary be mentioned in the deposit agreement. A trust account does not include a regular trust account under a

testamentary trust or a trust agreement which has significance apart from the account or a fiduciary account arising from a fiduciary relation such as attorney-client.

(15) “Withdrawal” includes payment to a third person pursuant to check or other directive of a party. (Code 1933, § 41A-3801, enacted by Ga. L. 1976, p. 1388, § 8; Ga. L. 2011, p. 518, § 5/HB 239.)

**The 2011 amendment**, effective July 1, 2011, in paragraph (10), twice inserted “or to an incorporated entity”, inserted “or her” near the beginning, substituted “such person’s” for “his” near the middle, and

added “or the dissolution of the incorporated entity” near the end; and inserted “or an incorporated entity” in paragraph (11).

## JUDICIAL DECISIONS

**Corporation not proper beneficiary on “payable on death” account.** — Corporation was not an eligible “payable on death” (POD) beneficiary on certificates of deposit or a trust account because under O.C.G.A. § 7-1-810(11), a POD payee on a death account had to have been a person, and under § 7-1-810(2), a beneficiary on a trust account had to have been a person; under O.C.G.A. § 7-1-4(26), a “person”

was defined as an individual, trust, general or limited partnership, unincorporated association (except a joint-stock association), or any other form of unincorporated enterprise. Thus, the corporation did not meet the statutory definition of person. *Tuvim v. United Jewish Cmty., Inc.*, 285 Ga. 632, 680 S.E.2d 827 (2009).

## 7-1-812. Ownership during lifetime.

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

#### General Consideration

**Cited** in *McLain v. Brown* (In re *McLain*), No. 01-12342-WHD, 2004

Bankr. LEXIS 1681 (Bankr. N.D. Ga. Sept. 30, 2004); *Davis v. Walker*, 288 Ga. App. 820, 655 S.E.2d 634 (2007).

## 7-1-813. Rights of survivorship.

**Law reviews.** — For annual survey on wills, trusts, guardianships, and fiduciary

administration, see 64 *Mercer L. Rev.* 325 (2012).

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

### General Consideration

#### Survivorship presumption rebutted.

Denial of a sister's motion for a judgment notwithstanding the verdict was affirmed as there was evidence supporting the imposition of a constructive trust after a mother's death on a bank account owned jointly with right of survivorship by the mother and the sister since the sister acknowledged that the account was opened for the mother's convenience. *Jenkins v. Jenkins*, 281 Ga. App. 756, 637 S.E.2d 56 (2006), cert. denied, 2007 Ga. LEXIS 87 (Ga. 2007).

#### Survivorship presumption not rebutted.

Denial of a sister's and an executrix's motions for a judgment notwithstanding the verdict were reversed as a constructive trust could not be imposed over the proceeds of a condemnation since: (1) a mother did not make any agreement with her children regarding the quitclaim deeds or the proceeds of the condemnation; (2) the documents signed by the siblings were unequivocal and unrestricted; (3) the mother did not make any promise with the intent not to carry it out; (4) there was nothing to indicate that when the mother obtained a certificate of deposit and opened a money market account in her and the executrix's and the sister's names as joint tenants with right of survivorship, she meant to do anything

other than that; and (5) the siblings did not raise the issue of a constructive trust in the condemnation proceedings and were collaterally estopped from raising the issue in a later action. *Jenkins v. Jenkins*, 281 Ga. App. 756, 637 S.E.2d 56 (2006), cert. denied, 2007 Ga. LEXIS 87 (Ga. 2007).

#### Intent held question for jury.

In an action for conversion of an estate's assets relating to a joint account created under O.C.G.A. § 7-1-813 between the executrix and a half-sister, given that some evidence existed that the decedent's purpose in establishing a joint account between the executrix of the decedent's estate and the half-sister was for the decedent's convenience, and not to effect a gift, summary judgment was erroneously granted to the half-sister. *Gray v. Benton*, 280 Ga. App. 339, 634 S.E.2d 86 (2006).

**Joint property not property of trust estate.** — Funds, which had been deposited by a trust donor from a joint account in the names of one of the beneficiaries, the donor, and the trustee had been used prior to the donor's death to purchase securities in the name of the donor and the trustee as joint tenants; those securities properly belonged to the trustee as the surviving party under O.C.G.A. §§ 7-1-813(a) and 14-5-8, and did not belong to the trust estate. *Davis v. Walker*, 288 Ga. App. 820, 655 S.E.2d 634 (2007).

**Cited in** *Rushin v. Ussery*, 298 Ga. App. 830, 681 S.E.2d 263 (2009).

## 7-1-821. Financial institution protection — Right to setoff.

### JUDICIAL DECISIONS

**Setoff held not unconscionable.** — Under Georgia law, a contract allowing a bank a setoff of the bank's indebtedness to depositors against the depositors' indebtedness to the bank was not substantively unconscionable and the language in the agreement regarding arbitration was con-

spicuous so the provision was not procedurally unconscionable; thus, the arbitration clause was enforceable under the Federal Arbitration Act, 9 U.S.C. § 1. In *re Checking Account Overdraft Litig.*, No. 11-14316, 2012 U.S. App. LEXIS 4180 (11th Cir. Mar. 1, 2012) (Unpublished).



## ARTICLE 13

LICENSING OF MORTGAGE LENDERS AND MORTGAGE  
BROKERS

**Law reviews.** — For comment, “Regulation of Mortgage Servicers,” see 63 Emory L. J. 175 (2013).

**7-1-1000. Definitions.**

As used in this article, the term:

(1) “Affiliate” or “person affiliated with” means, when used with reference to a specified person, a person who directly, indirectly, or through one or more intermediaries controls, is controlled by, or is under common control with the person specified. Any beneficial owner of 10 percent or more of the securities of a person or any executive officer, director, trustee, joint venturer, or general partner of a person is an affiliate of such person unless the shareholder, executive officer, director, trustee, joint venturer, or general partner shall prove that he or she in fact does not control, is not controlled by, or is not under common control with such person.

(2) “Audited financial statement” means the product of the examination of financial statements in accordance with generally accepted auditing standards by an independent certified public accountant, which product consists of an opinion on the financial statements indicating their conformity with generally accepted accounting principles.

(3) “Commissioner” means the commissioner of banking and finance.

(4) “Commitment” or “commitment agreement” means a statement by a lender required to be licensed or registered under this article that sets forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower.

(5) “Control,” including “controlling,” “controlled by,” and “under common control with,” means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting or nonvoting securities, by contract, or otherwise.

(6) “Department” means the Department of Banking and Finance.

(7) “Depository institution” has the same meaning as in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(c), and includes any credit union.

(8) “Dwelling” means a residential structure that contains one to four units, whether or not that structure is attached to real property

pursuant to Regulation Z Section 226.2(a)(19). The term includes an individual condominium unit, cooperative unit, mobile home, and trailer if it is used as a residence.

(9) “Executive officer” means the chief executive officer, the president, the principal financial officer, the principal operating officer, each vice president with responsibility involving policy-making functions for a significant aspect of a person’s business, the secretary, the treasurer, or any other person performing similar managerial or supervisory functions with respect to any organization whether incorporated or unincorporated.

(10) “Extortionate means” means the use or the threat of violence or other criminal means to cause harm to the person, reputation of the person, or property of the person.

(11) “Federal banking agencies” means the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation. Such term shall also include the Board of Governors of the Federal Reserve System.

(12) “Georgia Residential Mortgage Act” means this article, which also includes certain provisions in order to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

(13) “Individual” means a natural person.

(14) “License” means a license issued by the department under this article to act as a mortgage loan originator, mortgage lender, or mortgage broker.

(15) “Loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing. For purposes of this paragraph, “clerical or support duties” may include, subsequent to the receipt of an application, the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms. An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

(16) “Lock-in agreement” means a written agreement whereby a lender or a broker required to be licensed or registered under this article guarantees for a specified number of days or until a specified date the availability of a specified rate of interest for a mortgage loan, a specified formula by which the rate of interest will be determined, or a specific number of discount points if the mortgage loan is approved and closed within the stated period of time.

(17) “Makes a mortgage loan” means to advance funds, offer to advance funds, or make a commitment to advance funds to an applicant for a mortgage loan.

(18) “Misrepresent” means to make a false statement of a substantive fact. Misrepresent may also mean to intentionally engage in any conduct which leads to a false belief which is material to the transaction.

(19) “Mortgage broker” means any person who directly or indirectly solicits, processes, places, or negotiates mortgage loans for others, or offers to solicit, process, place, or negotiate mortgage loans for others or who closes mortgage loans which may be in the mortgage broker’s own name with funds provided by others and which loans are assigned within 24 hours of the funding of the loans to the mortgage lenders providing the funding of such loans.

(20) “Mortgage lender” means any person who directly or indirectly makes, originates, underwrites, holds, or purchases mortgage loans or who services mortgage loans.

(21) “Mortgage loan” means a loan or agreement to extend credit made to a natural person, which loan is secured by a deed to secure debt, security deed, mortgage, security instrument, deed of trust, or other document representing a security interest or lien upon any interest in one-to-four family residential property located in Georgia, regardless of where made, including the renewal or refinancing of any such loan.

(22) “Mortgage loan originator” means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. Generally, this does not include an individual engaged solely as a loan processor or underwriter except as otherwise provided in paragraph (5) of subsection (a) of Code Section 7-1-1002; a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Georgia law unless the person or entity is compensated by a mortgage lender, mortgage broker, or other mortgage loan originator or by any agent of such mortgage lender, mortgage broker, or other mortgage loan originator; and does not include a person or entity



solely involved in extensions of credit relating to time-share plans, as that term is defined in 11 U.S.C. Section 101(53D).

(23) “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators, mortgage loan brokers, and mortgage loan lenders, or its successor.

(24) “Nontraditional mortgage product” means any mortgage product other than a 30 year fixed rate mortgage.

(25) “Person” means any individual, sole proprietorship, corporation, limited liability company, partnership, trust, or any other group of individuals, however organized.

(26) “Real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction; engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and offering to engage in any activity or act in any capacity described herein.

(27) “Registered mortgage loan originator” means any individual who meets the definition of mortgage loan originator, is registered with and maintains a unique identifier through the Nationwide Mortgage Licensing System and Registry, and is an employee of:

- (A) A depository institution;
- (B) A subsidiary that is:
  - (i) Owned and controlled by a depository institution; and
  - (ii) Regulated by a federal banking agency; or
- (C) An institution regulated by the Farm Credit Administration.

(28) “Registrant” means any person required to register pursuant to Code Sections 7-1-1001 and 7-1-1003.2.

(29) “Residential property” means improved real property used or occupied, or intended to be used or occupied, as the primary residence

of a natural person. Such term does not include rental property or second homes. A natural person can have only one primary residence.

(30) “Residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in Section 103(v) of the Truth in Lending Act, or residential real estate upon which is constructed or intended to be constructed a dwelling.

(31) “Residential real estate” means any real property located in Georgia upon which is constructed or intended to be constructed a dwelling.

(32) “Service a mortgage loan” means the collection or remittance for another or the right to collect or remit for another of payments of principal, interest, trust items such as insurance and taxes, and any other payments pursuant to a mortgage loan.

(33) “Ultimate equitable owner” means a natural person who, directly or indirectly, owns or controls an ownership interest in a corporation or any other form of business organization, regardless of whether such natural person owns or controls such ownership interest through one or more natural persons or one or more proxies, powers of attorney, nominees, corporations, associations, limited liability companies, partnerships, trusts, joint-stock companies, other entities or devices, or any combination thereof.

(34) “Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry. (Code 1981, § 7-1-1000, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 1; Ga. L. 1996, p. 848, § 13; Ga. L. 1997, p. 143, § 7; Ga. L. 1997, p. 485, §§ 29, 30; Ga. L. 2000, p. 174, § 22; Ga. L. 2005, p. 826, § 29/SB 82; Ga. L. 2005, p. 1030, § 13/SB 55; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2011, p. 518, § 6/HB 239.)

**The 2005 amendments.** — The first 2005 amendment, effective May 5, 2005, rewrote paragraph (10). The second 2005 amendment, effective July 1, 2005, deleted “or by an independent Georgia registered public accountant considered acceptable by the department” following “certified public accountant” in paragraph (2).

**The 2009 amendment,** effective July 1, 2009, in the second sentence of paragraph (1), substituted “10 percent” for “20 percent” and deleted “combined voting power of all classes of voting” preceding

“securities”; added paragraph (3); redesignated former paragraphs (3) and (4) as present paragraphs (4) and (5), respectively; added paragraphs (6) through (8); redesignated former paragraphs (5) and (6) as present paragraphs (9) and (10), respectively; added paragraph (11); redesignated former paragraph (6.1) as present paragraph (12); in paragraph (12), added “, which also includes certain provisions in order to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008” at the end; added paragraph (13); redesignated former paragraph (7) as

present paragraph (14); in paragraph (14), substituted “mortgage loan originator, mortgage lender,” for “mortgage lender” near the end; added paragraph (15); redesignated former paragraphs (8) through (13) as present paragraphs (16) through (21), respectively; in paragraph (20), inserted “underwrites,” in the middle; added paragraphs (22) through (24); redesignated former paragraph (14) as present paragraph (25); added paragraphs (26) and (27); redesignated former paragraphs (15) and (16) as present paragraphs (28) and (29), respectively; in paragraph (29),

substituted “primary” for “principal” in the middle of the first sentence and added the last sentence; added paragraphs (30) and (31); redesignated former paragraphs (17) and (18) as present paragraphs (32) and (33), respectively; and added paragraph (34).

**The 2011 amendment**, effective July 1, 2011, inserted “holds,” in paragraph (20); and added “, or its successor” at the end of paragraph (23).

**Law reviews.** — For survey article on real property law, see 60 Mercer L. Rev. 345 (2008).

## JUDICIAL DECISIONS

**Construction.** — Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1000 et seq., gives rights not had under the common law and, thus, the Act is in derogation of common law and must be strictly

construed. *Hartford Fire Ins. Co. v. iFreedom Direct Corp.*, 312 Ga. App. 262, 718 S.E.2d 103 (2011), cert. denied, No. S12C0408, 2012 Ga. LEXIS 246 (Ga. 2012).

### 7-1-1001. Exemption for certain persons and entities; registration requirements.

(a) The following persons shall not be required to obtain a mortgage loan originator, mortgage broker, or mortgage lender license and shall not be subject to the provisions of this article but may be subject to registration requirements, unless otherwise provided by this article:

(1) Any lender authorized to engage in business as a bank, credit card bank, savings institution, building and loan association, or credit union under the laws of the United States, any state or territory of the United States, or the District of Columbia, the deposits of which are federally insured;

(2) Any wholly owned subsidiary of any lender described in paragraph (1) of this subsection. Any subsidiary that violates any applicable law of this article may be subject to a cease and desist order as provided for in Code Section 7-1-1018;

(2.1) Any wholly owned subsidiary of any bank holding company; provided, however, that such subsidiary shall be subject to registration requirements in order to facilitate the department’s handling of consumer inquiries. Such requirements are contained in Code Section 7-1-1003.3;

(3) Registered mortgage loan originators, when acting for an entity described in paragraph (1) or (2) of this subsection. To qualify for this exemption, an individual shall be registered with and maintain a



unique identifier through registration with the Nationwide Mortgage Licensing System and Registry;

(4) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of such individual. For purposes of this exemption, the term "immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. Immediate family members shall include stepparents, stepchildren, stepsiblings, and adoptive relationships;

(5) An attorney licensed to practice law in Georgia who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;

(6) A Georgia licensed real estate broker or real estate salesperson not actively engaged in the business of negotiating mortgage loans or a Georgia licensed real estate salesperson providing information to a lender or its agent related to an existing or potential short sale transaction in which a separate fee is not received by such real estate broker or real estate salesperson; however, such real estate broker or real estate salesperson who directly or indirectly negotiates, places, or finds a mortgage for others shall not be exempt from the provisions of this article;

(7) Any person performing any act relating to mortgage loans under order of any court;

(8) Any natural person or the estate of or trust created by a natural person making a mortgage loan with his or her own funds for his or her own investment, including those natural persons or the estates of or trusts created by such natural persons who make a purchase money mortgage for financing sales of their own property;

(9) The United States of America, the State of Georgia or any other state, and any agency, division, or corporate instrumentality of any governmental entity, including without limitation: the Georgia Housing and Finance Authority, the Georgia Development Authority, the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Government National Mortgage Association (GNMA), the United States Department of Housing and Urban Development (HUD), the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), the Farmers Home Administration (FmHA), and the Farm Credit Administration and its chartered agricultural credit associations;

(10) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence;

(11) Any person who makes a mortgage loan to an employee of such person as an employment benefit;

(12) Any licensee under Chapter 3 of this title, the "Georgia Industrial Loan Act," provided that any mortgage loan made by such licensee is for \$3,000.00 or less;

(13) Nonprofit corporations making mortgage loans to promote home ownership or improvements for the disadvantaged;

(14) A natural person employed by a licensed or registered mortgage broker, a licensed or registered mortgage lender, or any person exempted from the mortgage broker or mortgage lender licensing requirements of this article when acting within the scope of employment and under the supervision of the mortgage broker or mortgage lender or exempted person as an employee and not as an independent contractor, except those natural persons exempt from licensure as a mortgage broker or mortgage lender under paragraph (17) of this subsection. To be exempt from licensure as a mortgage broker or mortgage lender, a natural person shall be employed by only one such employer and shall be at all times eligible for employment in compliance with the provisions and prohibitions of Code Section 7-1-1004. Such natural person, who meets the definition of mortgage loan originator provided in paragraph (22) of Code Section 7-1-1000, shall be subject to mortgage loan originator licensing requirements. A natural person against whom a cease and desist order has become final shall not qualify for this exemption while under the employment time restrictions of subsection (o) of Code Section 7-1-1004 if such order was based on a violation of Code Section 7-1-1002 or 7-1-1013 or whose license was revoked within five years of the date such person was hired;

(15) Any person who purchases mortgage loans from a mortgage broker or mortgage lender solely as an investment and who is not in the business of brokering, making, purchasing, or servicing mortgage loans;

(16) Any natural person who makes five or fewer mortgage loans in any one calendar year. A person other than a natural person who makes five or fewer mortgage loans in any one calendar year shall not be exempt from the licensing requirements of this article;

(17)(A) A natural person otherwise required to be licensed as a mortgage lender or mortgage broker, who is under an exclusive written independent contractor agreement with any person that is a wholly owned subsidiary of a financial holding company or bank holding company, savings bank holding company, or thrift holding company, which subsidiary also meets the following requirements, subject to the review and approval of the department:

(i) The subsidiary has provided an undertaking of accountability supported by a surety bond equal to the lesser of \$1 million or \$50,000.00 per exempt person, to cover all of its persons exempted by this paragraph, that includes full and direct financial responsibility for the mortgage broker activities of each such exempted person, and also provides for the education of the exempt persons, the handling of consumer complaints related to the exempt persons, and the supervision of the mortgage broker activities of the exempt persons;

(ii) The subsidiary has applied for and been granted a mortgage broker or mortgage lender license, consistent with the provisions of this article and renewable annually; and

(iii) The subsidiary has paid applicable fees for this license, which license fees shall be the lesser of one-half of the sum of the cost of the individual licenses or \$100,000.00.

(B) To maintain the exemption, a natural person shall:

(i) Solicit, process, place, or negotiate a mortgage loan to be made only by the licensed subsidiary or its affiliate; and

(ii) Be at all times in compliance with the provisions and prohibitions of Code Section 7-1-1013 and the provisions and prohibitions applicable to employees under Code Section 7-1-1004.

(C) For purposes of this paragraph, the term “financial holding company” means a financial holding company as defined in the Bank Holding Company Act of 1956, as amended.

(D) The commissioner shall provide by rule or regulation for the implementation of this paragraph; or

(18)(A) An employee of a bona fide nonprofit corporation who acts as a mortgage loan originator only with respect to his or her work duties with the bona fide nonprofit corporation and who acts as a mortgage loan originator only with respect to mortgage loans with terms that are favorable to the borrower shall be exempt from obtaining a mortgage loan originator license. In order for a corporation to be considered a bona fide nonprofit corporation under this paragraph, the department shall determine, under criteria and pursuant to processes established by the department, that the nonprofit corporation:

(i) Has the status of a tax-exempt organization under Section 501(c) (3) of the Internal Revenue Code of 1986;

(ii) Promotes affordable housing;



(iii) Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;

(iv) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;

(v) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients;

(vi) Provides or identifies for the borrower mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs. In order for mortgage loans to have terms that are favorable to the borrower, the department shall determine that the terms are consistent with loan origination in a public or charitable context, rather than in a commercial context; and

(vii) Satisfies the exemption from licensure set forth in paragraph (13) of this subsection.

(B) The department shall periodically examine the books and activities of an organization it has previously identified as a bona fide nonprofit corporation for purposes of this paragraph in order to determine if it continues to meet the criteria for such status under subparagraph (A) of this paragraph. In conducting such an examination, the department shall have all of the powers set forth in Code Section 7-1-1009. In the event the nonprofit corporation no longer qualifies for such status, then the employee exemption from having a mortgage loan originator license shall no longer be applicable.

(b) Exemptions enumerated in paragraphs (1), (2), (2.1), (7), (8), (9), (11), (12), (13), (14), (15), (16), and (17) of subsection (a) of this Code section shall be exemptions from licensure as a mortgage broker or mortgage lender only. Nothing in paragraphs (1), (2), (2.1), (7), (8), (9), (11), (12), (13), (14), (15), (16), and (17) of subsection (a) of this Code section shall be intended to exempt natural persons from compliance with mortgage loan originator licensing requirements as set forth in this article and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008. Individuals that transact business as a mortgage loan originator, unless specifically exempted by paragraph (3), (4), (5), (6), (10), or (18) of subsection (a) of this Code section, shall obtain a mortgage loan originator license as required by Code Section 7-1-1002 whether they are employed by a mortgage broker, mortgage lender, or person exempted as a mortgage broker or lender as set forth in this subsection. (Code 1981, § 7-1-1001, enacted by Ga. L. 1993, p. 543, § 1;

Ga. L. 1994, p. 570, § 2; Ga. L. 1996, p. 848, § 14; Ga. L. 1997, p. 485, § 31; Ga. L. 1999, p. 674, § 30; Ga. L. 2000, p. 174, § 23; Ga. L. 2003, p. 843, § 16; Ga. L. 2006, p. 750, § 1/SB 505; Ga. L. 2007, p. 502, § 33/SB 70; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2010, p. 878, § 7/HB 1387; Ga. L. 2011, p. 518, § 7/HB 239; Ga. L. 2011, p. 752, § 7/HB 142; Ga. L. 2012, p. 775, § 7/HB 942; Ga. L. 2013, p. 638, § 1/HB 83; Ga. L. 2014, p. 421, § 1/HB 750.)

**The 2006 amendment**, effective July 1, 2006, deleted “or” from the end of paragraph (12); substituted “; or” for the period at the end of paragraph (13); and added paragraph (14).

**The 2007 amendment**, effective July 1, 2007, deleted “unless such person applies for and is granted an exemption by the department in accordance with regulations promulgated by the department” following “article” at the end of paragraph (13).

**The 2009 amendment**, effective July 1, 2009, designated the existing provisions as subsection (a); in the introductory paragraph of subsection (a), substituted “mortgage loan originator, mortgage broker,” for “mortgage broker” and deleted “or notification” preceding “requirements”; rewrote paragraph (a)(2); inserted “that” in paragraph (a)(2.1); rewrote paragraph (a)(3); added paragraphs (a)(4) and (a)(5); redesignated former paragraphs (4) through (7) as present paragraphs (a)(6) through (a)(9), respectively; in paragraph (a)(6), deleted “receives any fee, commission, kickback, rebate, or other payment for” preceding “directly” and substituted “negotiates, places, or finds” for “negotiating, placing, or finding” near the end; added paragraph (a)(10); redesignated former paragraphs (8) through (14) as present paragraphs (a)(11) through (a)(17), respectively; rewrote paragraph (a)(14); in paragraph (a)(17), inserted “as a mortgage lender or mortgage broker” in the first sentence of subparagraph (a)(17)(A), substituted “shall” for “must” at the end of subparagraph (a)(17)(B), and, in subparagraph (a)(17)(C), inserted “the term” and substituted “means” for “shall mean” in the middle; and added subsection (b).

**The 2010 amendment**, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted

“Section” for “Sections” in paragraph (a)(14) and substituted “paragraph” for “paragraphs” in the last sentence of subsection (b).

**The 2011 amendments.** — The first 2011 amendment, effective July 1, 2011, substituted “An attorney licensed to practice law in Georgia” for “A licensed attorney” at the beginning of paragraph (a)(5). The second 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (b).

**The 2012 amendment**, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted “paragraph (1) of this subsection” for “paragraph (1) of this Code section” in paragraph (a)(2); substituted “paragraph (1) or (2) of this subsection” for “paragraphs (1) or (2) of this Code section” in paragraph (a)(3); and substituted “under paragraph (17) of this subsection” for “under paragraph (17) of this Code section” in paragraph (a)(14).

**The 2013 amendment**, effective July 1, 2013, in paragraph (a)(6), inserted “Georgia licensed” near the beginning and, near the middle, inserted “or a Georgia licensed real estate salesperson providing information to a lender or its agent related to an existing or potential short sale transaction in which a separate fee is not received by such real estate broker or real estate salesperson” and substituted “such real estate” for “a real estate”.

**The 2014 amendment**, effective April 21, 2014, deleted “or” at the end of paragraph (a)(16); added “; or” at the end of subparagraph (a)(17)(D); added paragraph (a)(18); and substituted “(6), (10), or (18)” for “(6), or (10)” near the middle of the last sentence of subsection (b).

**Law reviews.** — For annual survey on real property, see 65 Mercer L. Rev. 233 (2013).

**7-1-1001.1. Requirement for mortgage loan originator license; application to sellers of mobile homes.**

(a) Effective August 1, 2010, it shall be prohibited for any person to engage in the activities of a mortgage loan originator without first obtaining and maintaining a mortgage loan originator license as set forth in this article. All provisions within this article that relate to the licensing requirements and associated duties and responsibilities of mortgage loan originators shall be effective as of August 1, 2010.

(b) The department shall have the broad administrative authority to administer, interpret, and enforce this article and the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, and promulgate rules or regulations implementing it, in order to carry out the intentions of the federal legislation.

(c) The provisions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 shall apply to the activities of retail sellers of manufactured homes to the extent determined by the United States Department of Housing and Urban Development through written guidelines, rules, regulations, or interpretive letters. (Code 1981, § 7-1-1001.1, enacted by Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2011, p. 518, § 8/HB 239.)

**Effective date.** — This Code section became effective July 1, 2009.

**The 2011 amendment,** effective July 1, 2011, substituted the present provisions of subsection (a) for the former provisions, which read: "In order to comply with the federal requirements contained in the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, also known as the S.A.F.E. Mortgage Licensing Act of 2008, on and after January 1, 2010, or such later date approved by the Secretary of the United States Department of Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a), it shall be prohibited for any person to en-

gage in the activities of a mortgage loan originator without first obtaining and maintaining a mortgage loan originator license as set forth in this article. All provisions within this article that relate to the licensing requirements and associated duties and responsibilities of mortgage loan originators shall be effective on and after January 1, 2010, or such later date approved by the Secretary of the United States Department of Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a)."; and, in subsection (b), inserted "federal" near the middle, and substituted "legislation" for "legislature" at the end.



**7-1-1002. Transaction of business without a license, registration, or exemption prohibited; knowing purchase of mortgage loan from unlicensed or nonexempt broker or lender prohibited; liability of persons controlling violators.**

(a) It shall be prohibited for any person to transact business in this state directly or indirectly as a mortgage broker, a mortgage lender, or a mortgage loan originator unless such person:

(1) Is licensed or registered as such by the department utilizing the Nationwide Mortgage Licensing System and Registry;

(2) Is a person exempted from the licensing or registration requirements pursuant to Code Section 7-1-1001;

(3) In the case of an employee of a mortgage broker or mortgage lender, such person has qualified to be relieved of the necessity for a license under the employee exemption in paragraph (14) of subsection (a) of Code Section 7-1-1001;

(4) In the case of a mortgage loan originator, such person is supervised by a mortgage broker, mortgage lender, or exemptee on a daily basis while performing mortgage functions; is employed by and works exclusively for only one mortgage broker, mortgage lender, or exemptee; and is paid on a W-2 basis by the employing mortgage broker, mortgage lender, or exemptee, except those natural persons exempt from licensure as a mortgage broker or mortgage lender under paragraph (17) of subsection (a) of Code Section 7-1-1001. Each licensed mortgage loan originator shall register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry. For the purposes of implementing an orderly and efficient mortgage loan originator process, the department may establish licensing rules or regulations and interim procedures for licensing and acceptance of applications; or

(5) A loan processor or underwriter who is an independent contractor shall not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a mortgage broker or mortgage lender license. Each independent contractor loan processor or underwriter licensed as a mortgage broker or mortgage lender shall have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(b) It shall be prohibited for any person, as defined in Code Section 7-1-1000, to purchase, sell, or transfer one or more mortgage loans or loan applications from or to a mortgage loan originator, mortgage broker, or mortgage lender who is neither licensed nor exempt from the

licensing or registration provisions of this article. Such a purchase shall not affect the obligation of the borrower under the terms of the mortgage loan. The department shall provide for distribution or availability of information regarding approved or revoked licenses.

(c) Every person who directly or indirectly controls a person who violates subsection (a) or (b) of this Code section, every general partner, executive officer, joint venturer, or director of such person, and every person occupying a similar status or performing similar functions as such person violates with and to the same extent as such person, unless the person whose violation arises under this subsection sustains the burden of proof that he or she did not know and, in the exercise of reasonable care, could not have known of the existence of the facts by reason of which the original violation is alleged to exist. (Code 1981, § 7-1-1002, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1995, p. 673, § 33; Ga. L. 1996, p. 848, § 15; Ga. L. 1998, p. 795, § 28; Ga. L. 2000, p. 174, § 24; Ga. L. 2003, p. 843, § 17; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2010, p. 878, § 7/HB 1387; Ga. L. 2011, p. 518, § 9/HB 239.)

**The 2009 amendment**, effective July 1, 2009, in subsection (a), in the introductory paragraph, substituted “It shall be” for “On and after July 1, 1993, it is” at the beginning and substituted “broker, a mortgage lender, or a mortgage loan originator” for “broker or a mortgage lender”, in paragraph (a)(1), added “utilizing the Nationwide Mortgage Licensing System and Registry” at the end, in paragraph (a)(2), deleted “or” at the end, in paragraph (a)(3), substituted “paragraph (8)” for “paragraph (11)” and substituted a semicolon for a period at the end, and added paragraphs (a)(4) and (a)(5); re-wrote the first sentence of subsection (b);

and, in subsection (c), substituted “Every” for “On or after July 1, 1996, every” at the beginning.

**The 2010 amendment**, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, inserted “of subsection (a)” in the first sentence of paragraph (a)(4).

**The 2011 amendment**, effective July 1, 2011, substituted “paragraph (14)” for “paragraph (11)” in paragraph (a)(3).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2009, “paragraph (11) of subsection (a)” was substituted for “paragraph (8)” in paragraph (a)(3).

### 7-1-1003. Applications for licenses.

(a) An application for a license under this article shall be made in writing, under oath, and in such form as the department may prescribe. Each such form shall contain content as set forth by rule, regulation, instruction, or procedure of the department and may be changed or updated as necessary by the department in order to carry out the purposes of this article. The department, by regulation, may prescribe different classes of licenses for mortgage loan originators, mortgage brokers, and mortgage lenders.

(b) The application shall include the following:

(1) The legal name and address of the applicant and, if the applicant is a partnership, association, corporation, or other business entity, of every member, officer, and director thereof;

(2) All names, including, but not limited to, website domain names (URLs), under which the applicant will conduct business in Georgia;

(3) For mortgage brokers and mortgage lenders, the address of the main office or principal place of business where books and records are located and any other locations at which the applicant will engage in any business activity covered by the provisions of this article, together with the mailing address where the department shall send all correspondence, orders, or notices. Any changes in this mailing address shall be delivered in writing to the department before the change is effective;

(4) For mortgage brokers and mortgage lenders, the complete name and address of the applicant's initial registered agent and registered office for service of process in Georgia. If the applicant is a Georgia corporation, this registered agent shall be the same as the agent recorded with the Secretary of State. Any changes in the registered agent or registered office shall be delivered in writing to the department and the Secretary of State, if applicable, before the change is effective. The registered agent may, but is not required to, be an officer of the applicant, and the registered office shall be a Georgia location where the registered agent may be served;

(5) For mortgage brokers and mortgage lenders, the general plan and character of the business;

(6) For mortgage brokers and mortgage lenders, a financial statement of the applicant;

(7) For mortgage brokers and mortgage lenders, such other data, financial statements, and pertinent information as the department may require with respect to the applicant, its directors, trustees, officers, members, agents, or ultimate equitable owners of 10 percent or more of the applicant; and

(8) For mortgage brokers and mortgage loan originators, evidence of satisfaction of experience or education requirements, as required by regulations of the department.

(c) All applications filed under this Code section shall be filed together with:

(1) Investigation and supervision fees established by regulation. The investigation fee shall not be refundable; provided, however, that any supervision fee paid at the time of the application shall be refunded if the license is not granted;



(2) The items required by Code Section 7-1-1003.2; and

(3) Other information as may be required by the department. (Code 1981, § 7-1-1003, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 3; Ga. L. 1996, p. 848, § 16; Ga. L. 1999, p. 674, § 31; Ga. L. 2000, p. 174, § 25; Ga. L. 2001, p. 970, § 10; Ga. L. 2005, p. 826, § 30/SB 82; Ga. L. 2009, p. 252, § 1/HB 312.)

**The 2005 amendment**, effective May 5, 2005, substituted “corporation, or other business entity” for “or corporation,” in paragraph (b)(1).

**The 2009 amendment**, effective July 1, 2009, in subsection (a), added the second sentence, and substituted “mortgage loan originators, mortgage brokers,” for “both mortgage brokers” near the end; in subsection (b), in paragraph (b)(2), substituted “All names, including, but not limited to, website domain names (URLs),” for “The name” at the beginning, in paragraphs (b)(3) and (b)(4), substituted “For mortgage brokers and mortgage lenders, the” for “The” at the beginning of the first sentence and substituted “shall” for “must” in the last sentence, in paragraph

(b)(5), substituted “For mortgage brokers and mortgage lenders, the” for “The” at the beginning, in paragraph (b)(6), substituted “For mortgage brokers and mortgage lenders, a” for “A” at the beginning, in paragraph (b)(7), substituted “For mortgage brokers and mortgage lenders, such” for “Such” at the beginning, and, in paragraph (b)(8), inserted “and mortgage loan originators”; and, in subsection (c), substituted “All applications filed under this Code section” for “The application” at the beginning of the introductory paragraph, in paragraph (c)(1), inserted “that” and deleted “and” at the end, substituted “; and” for a period at the end of paragraph (c)(2), and added paragraph (c)(3).

## JUDICIAL DECISIONS

**Commercial property** — Earlier version of O.C.G.A. § 7-1-1003(c)(2) did not include loans secured by commercial property represented to be residential; therefore, a purchaser of commercial property was unable to recover a bond to partially satisfy a judgment against a fraudulent mortgage broker. *Accerbi v. Hartford Fire Ins. Co.*, No. CV 104-048, 2005 U.S. Dist. LEXIS 36032 (S.D. Ga. Sept. 26, 2005).

**Acts not covered by bond.** — Trial court erred in granting a purchaser summary judgment and in denying an insurer summary judgment in the purchaser’s action to recover against a bond the insurer

issued to a mortgage lender under the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1000 et seq., because the acts that gave rise to the judgment the purchaser obtained against the lender occurred before the bond was in effect, and the lender’s failure to pay the judgment was not an act that authorized recovery against the bond; the bond did not contain a specific covenant extending liability to acts prior to the bond’s execution. *Hartford Fire Ins. Co. v. iFreedom Direct Corp.*, 312 Ga. App. 262, 718 S.E.2d 103 (2011), cert. denied, No. S12C0408, 2012 Ga. LEXIS 246 (Ga. 2012).

### 7-1-1003.1. Physical place of business.

If the applicant for a mortgage broker license or a renewal of such license does not have a physical place of business in Georgia, a license or renewal shall only be issued if the applicant’s home state does not require that in order to be licensed a mortgage broker shall have a physical place of business in such home state. In either case, an applicant shall have a registered agent and a registered office in this

state. (Code 1981, § 7-1-1003.1, enacted by Ga. L. 1998, p. 590, § 1; Ga. L. 1999, p. 674, § 32; Ga. L. 2009, p. 252, § 1/HB 312.)

**The 2009 amendment**, effective July 1, 2009, substituted “shall” for “may” and substituted “shall” for “must” twice.

### **7-1-1003.2. Financial requirements for licensing and registration; bond requirements.**

(a) Each licensed or registered mortgage broker shall provide the department with a bond. The bond for a mortgage broker shall be in the principal sum of \$50,000.00 or such greater sum as the department may require as set forth by regulation based on an amount that reflects the dollar amount of loans originated, and the bond shall meet the other requirements of subsection (d) of this Code section.

(b) Except as otherwise provided in subsection (d) of this Code section, the department shall not license or register any mortgage lender unless the applicant or registrant provides the department with a bond. The bond for a mortgage lender shall be in the principal sum of \$150,000.00 or such greater sum as the department may require as set forth by regulation based on an amount that reflects the dollar amount of loans originated, and which bond shall meet the other requirements of subsection (d) of this Code section.

(c) Each mortgage loan originator shall be covered by the surety bond of his or her sponsoring licensed or registered mortgage broker or lender. In the event that the mortgage loan originator is an employee of a licensed or registered mortgage broker or lender or under an exclusive written independent contractor agreement as described in paragraph (17) of Code Section 7-1-1001, the surety bond of such licensed or registered mortgage broker or lender may be used in lieu of the mortgage loan originator’s surety bond requirement.

(d) General bond requirements:

(1) The bond requirements for mortgage loan originators, mortgage brokers, and mortgage lenders are continuous in nature and shall be maintained at all times as a condition of licensure;

(2) The corporate surety bond shall be for a term and in a form satisfactory to the department, shall be issued by a bonding company or insurance company authorized to do business in this state and approved by the department, and shall run to the State of Georgia for the benefit of any person damaged by noncompliance of a licensee with this article, the “Georgia Residential Mortgage Act,” or with any condition of such bond. Damages under the bond shall include moneys owed to the department for fees, fines, or penalties. Such

bond shall be continuously maintained thereafter in full force. Such bond shall be conditioned upon the applicant or the licensee conducting his or her licensed business in conformity with this article and all applicable laws;

(3) When an action is commenced on a licensee's bond, the department may require the filing of a new bond; and

(4) Immediately upon recovery upon any action on the bond, the licensee shall file a new bond.

(e) Any person including the department who may be damaged by noncompliance of a licensee with any condition of a bond or this article, the "Georgia Residential Mortgage Act," may proceed on such bond against the principal or surety thereon, or both, to recover damages. (Code 1981, § 7-1-1003.2, enacted by Ga. L. 2000, p. 174, § 26; Ga. L. 2001, p. 970, § 11; Ga. L. 2003, p. 843, § 18; Ga. L. 2004, p. 458, § 11; Ga. L. 2005, p. 826, § 31/SB 82; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2011, p. 518, § 10/HB 239.)

**The 2005 amendment**, effective May 5, 2005, substituted "subsection (c)" for "subparagraph (c)(2)(B)" following "requirements of" in subsections (a) and (b); in subsection (a), deleted the last two sentences; in subsection (b), deleted the last sentence; rewrote subsection (c); in subsection (d), substituted "As an alternative to a bond, an applicant or a licensee may supply an" for "An" at the beginning and deleted "may be substituted for the bond requirement for a mortgage broker or mortgage lender license" at the end; in subsection (e), inserted "or this article, the 'Georgia Residential Mortgage Act,'" and deleted subsections (f) and (g).

**The 2009 amendment**, effective July 1, 2009, rewrote this Code section.

**The 2011 amendment**, effective July 1, 2011, in subsection (c), substituted "by the surety bond of his or her sponsoring licensed or registered mortgage broker or lender" for "by a surety bond in accordance with this Code section" in the first sentence, and deleted the former last sentence, which read: "If the surety bond of the licensed or registered mortgage broker or lender is used in lieu of an individual mortgage loan originator's surety bond then that surety bond shall provide coverage for each covered mortgage loan originator in such amount as the department may require that reflects the dollar amount of loans originated as determined by the department."

## JUDICIAL DECISIONS

**Acts not covered by bond.** — Trial court erred in granting a purchaser summary judgment and in denying an insurer summary judgment in the purchaser's action to recover against a bond the insurer issued to a mortgage lender under the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1000 et seq., because the acts that gave rise to the judgment the purchaser obtained against the lender oc-

curred before the bond was in effect, and the lender's failure to pay the judgment was not an act that authorized recovery against the bond; the bond did not contain a specific covenant extending liability to acts prior to the bond's execution. *Hartford Fire Ins. Co. v. iFreedom Direct Corp.*, 312 Ga. App. 262, 718 S.E.2d 103 (2011), cert. denied, No. S12C0408, 2012 Ga. LEXIS 246 (Ga. 2012).



**7-1-1003.3. Application for registration.**

**Editor's notes.** — Ga. L. 2009, p. 252, Code section without change. Refer to § 1, effective July 1, 2009, reenacted this bound volume for text of this Code section.

**7-1-1003.4. Notification statement.**

Reserved. Repealed by Ga. L. 2009, p. 252, § 1/HB 312, effective July 1, 2009.

**Editor's notes.** — This Code section was based on Code 1981, § 7-1-1003.4, enacted by Ga. L. 2000, p. 174, § 26.

**7-1-1003.5. Nationwide Mortgage Licensing System and Registry.**

(a) The department is authorized to:

(1) Participate in the Nationwide Mortgage Licensing System and Registry in order to facilitate the sharing of information and standardization of the licensing and application processes for mortgage loan originators, mortgage brokers, and mortgage lenders by electronic or other means;

(2) Enter into operating agreements, information sharing agreements, interstate cooperative agreements, and other contracts necessary for the department's participation in the Nationwide Mortgage Licensing System and Registry;

(3) Request that the Nationwide Mortgage Licensing System and Registry adopt an appropriate privacy, data security, and security breach notification policy that is in full compliance with existing state and federal law;

(4) Disclose or cause to be disclosed without liability via the Nationwide Mortgage Licensing System and Registry applicant and licensee information, including, but not limited to, violations of this article and enforcement actions to facilitate regulatory oversight of mortgage loan originators, mortgage brokers, and mortgage lenders across state jurisdictional lines;

(5) Establish and adopt, by rule or regulation, requirements for participation by applicants and licensees in the Nationwide Mortgage Licensing System and Registry upon the department's determination that each new or amended requirement is consistent with both the public interest and the purposes of this article; and

(6) Pay all fees received from licensees and applicants related to applications, licenses, and renewals to the Office of the State Treasurer; provided, however, that the department may net such fees to

recover the cost of participation in the Nationwide Mortgage Licensing System and Registry.

(b) Irrespective of its participation in the Nationwide Mortgage Licensing System and Registry, the department retains full and exclusive authority over determinations whether to grant, renew, suspend, or revoke licenses issued to mortgage loan originators, mortgage brokers, and mortgage lenders under this article. Nothing in this Code section shall be construed to reduce this authority. (Code 1981, § 7-1-1003.5, enacted by Ga. L. 2008, p. 539, § 1/HB 921; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2010, p. 863, § 2/SB 296; Ga. L. 2011, p. 518, § 11/HB 239; Ga. L. 2012, p. 775, § 7/HB 942.)

**Effective date.** — This Code section became effective July 1, 2008.

**The 2009 amendment,** effective July 1, 2009, throughout this Code section, substituted “mortgage loan originators, mortgage brokers,” for “mortgage brokers”; in subsection (a), in the introductory paragraph, substituted “multistate” for “multi-state” twice, in paragraph (a)(4), inserted “, including, but not limited to, violations of this article and enforcement actions,” and, in paragraph (a)(7), inserted “for mortgage brokers and

mortgage lenders”; and, in subsection (b), inserted “suspend,” near the middle of the first sentence.

**The 2010 amendment,** effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” in paragraph (a)(6).

**The 2011 amendment,** effective July 1, 2011, rewrote this Code section.

**The 2012 amendment,** effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (a)(3).

### **7-1-1003.6. Privileged or confidential nature of information; exception.**

(a) Except as otherwise provided in the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, the requirements under any federal law or Georgia state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all state and federal regulatory agencies or law enforcement authorities without the loss of privilege or the loss of confidentiality protection provided by federal or state law.

(b) Information or material that is subject to privilege or confidentiality under subsection (a) of this Code section shall not be subject to:

(1) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(2) Subpoena or discovery, or admission into evidence, in any private civil action unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry regarding such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person that privilege.

(c) This Code section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, licensees that are included in the Nationwide Mortgage Licensing System and Registry for access by the public. (Code 1981, § 7-1-1003.6, enacted by Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2011, p. 518, § 12/HB 239.)

**Effective date.** — This Code section became effective July 1, 2009.

**The 2011 amendment,** effective July 1, 2011, in subsection (a), inserted “federal” near the beginning of the first sentence, substituted “regulatory agencies or law enforcement authorities” for “regulatory official with mortgage industry oversight authority” in the second sentence; in paragraph (b)(2), deleted “or administrative process,” following “civil action”, and

substituted “regarding such” for “with respect to such”.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2009, in subsection (a), “confidentiality” was substituted for “confidentially” in the first sentence, and in subsection (b), “to privilege or confidentiality” was substituted for “to a privilege or confidentially” in the introductory language.

### **7-1-1003.7. Approval of mortgage industry related courses; application; renewal applications; audits.**

(a) Any education provider which offers mortgage industry related courses designed to satisfy education requirements as provided in subsection (c) of Code Section 7-1-1004 and associated department rules shall be approved by the department.

(b) An application under this Code section shall be made in writing, under oath, and in such form as the department may prescribe. The application shall include the following:

(1) The name and address of the applicant and, if the entity is not a sole proprietorship, the name of every member, officer, principal, or director thereof;

(2) The name under which the applicant will conduct business in Georgia;

(3) A proposed certificate program or course of study which lists each subject to be taught and credit or classroom hours for each course designed to satisfy education requirements;

(4) Qualifications and credentials of any and all instructors teaching courses named in paragraph (3) of this subsection; and



(5) Other information as may be required by the department.

(c) The initial application shall be filed with the department along with fees established by rule, no portion of which shall be refunded or prorated. Upon receipt of an application, the department shall conduct such investigation as it deems necessary to determine that the applicant and the individuals who direct the affairs or establish policy for the applicant, including the officers, directors, or the equivalent, are of good character and ethical reputation; that the applicant and such persons meet the requirements of subsection (h) of Code Section 7-1-1004; that the applicant and such persons demonstrate reasonable financial responsibility; that the applicant has and maintains a registered agent for service in this state; and that the applicant and such persons are qualified by education and experience to present courses directly related to the mortgage brokering process.

(d) All education providers approved under this Code section shall be required to file a renewal application on an annual basis in writing, under oath, and in such a form as the department may prescribe. A fee established by the department shall be paid with each renewal application, which fee shall not be refunded or prorated. Failure to file a renewal application shall result in the education provider being removed from the department list of approved mortgage education providers.

(e) The department may audit or investigate course offerings of the applicant or approved mortgage education provider as it deems necessary and without cost to the department. (Code 1981, § 7-1-1003.7, enacted by Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2010, p. 878, § 7/HB 1387; Ga. L. 2011, p. 518, § 13/HB 239.)

**Effective date.** — This Code section became effective July 1, 2009.

**The 2010 amendment,** effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, inserted “Code” in the introductory language of subsection (b), and substituted “and that the appli-

cant” for “and the applicant” in subsection (c).

**The 2011 amendment,** effective July 1, 2011, substituted “requirements of subsection (h)” for “requirements of subsection (d)” in the second sentence of subsection (c).

**7-1-1004. Investigation of applicant and its officers; audit; education, experience, and other requirements relative to licensees and registrants.**

(a) Upon receipt of an application for license or registration, the department shall conduct such investigation as it deems necessary to determine that the mortgage broker and mortgage lender applicant and the individuals who direct the affairs or establish policy for the mortgage broker and mortgage lender applicant, including the officers, directors, or the equivalent, are of good character and ethical reputa-

tion; that the mortgage broker and mortgage lender applicant is not disqualified for licensure as a result of adverse administrative civil or criminal findings in any jurisdiction; that the mortgage broker and mortgage lender applicant and such persons meet the requirements of subsection (h) of this Code section; that the mortgage broker and mortgage lender applicant and such persons demonstrate reasonable financial responsibility; that the mortgage broker and mortgage lender applicant has reasonable policies and procedures to receive and process customer grievances and inquiries promptly and fairly; and that the mortgage broker and mortgage lender applicant has and maintains a registered agent for service in this state.

(b) The department shall not license or register any mortgage broker and mortgage lender applicant unless it is satisfied that the mortgage broker and mortgage lender applicant may be expected to operate its mortgage lending or brokerage activities in compliance with the laws of this state and in a manner which protects the contractual and property rights of the citizens of this state.

(c) The department may establish by rule or regulation minimum education or experience requirements for an applicant for a mortgage broker license or renewal of such a license.

(d) Upon receipt of an application for a mortgage loan originator license, the department shall conduct such investigation as it deems necessary to determine that the mortgage loan originator applicant:

(1) Has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation;

(2) Has not been convicted of, or pleaded guilty or nolo contendere to, a felony in a domestic, foreign, or military court; provided, however, that any pardon of a conviction shall not be a conviction for purposes of this subsection;

(3) Has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this article;

(4) Has completed the precicensing education requirement described in subsection (e) of this Code section; and

(5) Has passed a written test that meets the test requirement described in subsection (f) of this Code section.

(e)(1) An individual shall complete at least 20 hours of precicensing education courses reviewed and approved by the Nationwide Mort-

gage Licensing System and Registry based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider. The 20 hours of prelicensing education shall include at least:

(A) Three hours of federal law and regulations;

(B) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(C) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) Nothing in this subsection shall preclude any prelicensing education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

(3) Prelicensing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(4) The prelicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in paragraph (1) of this subsection for any state shall be accepted as credit towards completion of prelicensing education requirements in Georgia.

(5) A person previously licensed under this article applying to be licensed again shall prove that he or she has completed all of the continuing education requirements for the year in which the license was last held.

(f)(1) In order to meet the written test requirement referred to in subsection (d) of this Code section for mortgage loan originators, an individual shall pass, in accordance with the standards established under this subsection, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(2) A written test shall not be treated as a qualified written test for purposes of this subsection unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

(A) Ethics;

(B) Federal law and regulation pertaining to mortgage origination;



(C) State law and regulation pertaining to mortgage origination; and

(D) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(3) Nothing in this subsection shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(4)(A) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to questions.

(B) An individual may retake a test three consecutive times with each consecutive taking occurring at least 30 days after the preceding test.

(C) After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

(D) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

(g)(1) In order to meet the annual continuing education requirements referred to in paragraph (2) of subsection (e) of Code Section 7-1-1005, a licensed mortgage loan originator shall complete at least eight hours of education approved in accordance with paragraph (2) of this subsection which shall include at least:

(A) Three hours of federal law and regulations;

(B) Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(C) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) For purposes of paragraph (1) of this subsection, continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(3) Nothing in this subsection shall preclude any education course from approval by the Nationwide Mortgage Licensing System and

Registry that is provided by the employer of the mortgage loan originator or any entity which is affiliated with the mortgage loan originator by an agency contact, or any subsidiary or affiliate of such employer or entity.

(4) Continuing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(5) A licensed mortgage loan originator, except for as provided for in paragraph (9) of this subsection and subsection (f) of Code Section 7-1-1005, shall only receive credit for a continuing education course in the year in which the course is taken and shall not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(6) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours of credit for every one hour taught.

(7) An individual having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in paragraph (1) of this subsection for any state shall be accepted as credit towards completion of continuing education requirements in Georgia.

(8) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(9) An individual meeting the requirements of paragraphs (1) and (3) of subsection (e) of Code Section 7-1-1005 may make up any deficiency in continuing education as established by rule or regulation of the department.

(h) The department shall not issue or may revoke a license or registration if it finds that the mortgage loan originator, mortgage broker, or mortgage lender applicant or licensee, or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the mortgage broker or mortgage lender applicant, registrant, or licensee or any individual who directs the affairs or establishes policy for the mortgage broker or mortgage lender applicant, registrant, or licensee, has been convicted of a felony in any jurisdiction or of a crime which, if committed within this state, would constitute a felony under the laws of this state. Other than a mortgage loan originator, for the purposes of this article, a person shall be deemed

to have been convicted of a crime if such person shall have pleaded guilty or nolo contendere to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof, and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered, or an adjudication or sentence was otherwise withheld or not entered on the charge, unless and until such plea of guilty, or such decision, judgment, or verdict, shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation and sentence of a first offender have been successfully completed and documented, or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction occurred or shall have received an official certification or pardon granted by the state's pardoning body in the jurisdiction where the conviction occurred. For purposes of this article, a mortgage loan originator shall be deemed to have been convicted of a crime if he or she has pleaded guilty to, been found guilty of, or entered a first offender or nolo contendere plea to a felony in a domestic, foreign, or military court; provided, however, that any pardon of a conviction shall not be a conviction.

(i) The department shall be authorized to obtain conviction data with respect to any mortgage loan originator, mortgage broker, or mortgage lender applicant or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the mortgage broker or mortgage lender applicant and any individual who directs the affairs of the company or establishes policy. The department may directly submit to the Georgia Crime Information Center two complete sets of fingerprints of such applicant or such person, together with the required records search fees and such other information as may be required. Fees for background checks that the department administers shall be sent to the department by applicants and licensees together with the fingerprints. Mortgage broker and mortgage lender applicants, licensees, and registrants shall have the primary responsibility for obtaining background checks of covered employees which are defined as employees who work in this state and also have the authority to enter, delete, or verify any information on any mortgage loan application form or document. The department shall, however, retain the right to obtain conviction data on covered employees.

(j) In connection with an application for licensing with respect to any mortgage loan originator applicant, mortgage broker, or lender applicant, at the direction of the department, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:



(1) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check;

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the department to obtain:

(A) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. Section 1681a(f); and

(B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction;

(3) For the purposes set forth in this subsection and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of such section, the department may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency; and

(4) For the purposes of this subsection and in order to reduce the points of contact which the department may have to maintain for purposes of such subsection, the department may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the department.

(k) Every mortgage broker and mortgage lender licensee, registrant, and applicant shall be authorized and required to obtain background checks on covered employees. Such background checks shall be handled by the Georgia Crime Information Center pursuant to Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information Center. Licensees, registrants, and applicants shall be responsible for any applicable fees charged by the center. A background check shall be initiated for a person in the employ of a licensee, registrant, or applicant within ten days of the date of initial hire and be completed with satisfactory results within the first 90 days of employment. This provision shall not apply to directors, officers, partners, agents, or ultimate equitable owners of 10 percent or more or to persons who direct the company's affairs or establish policy, whose background shall have been investigated through the department before taking office, beginning employment, or securing ownership. Upon receipt of information from the Georgia Crime Information Center that is incomplete or that indicates an employee has a criminal record in any state other

than Georgia, the employer shall submit to the department two complete sets of fingerprints of such person, together with the applicable fees and any other required information. The department shall submit such fingerprints as provided in subsection (i) of this Code section.

(l) Upon receipt of fingerprints, fees, and other required information, the Georgia Crime Information Center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check, or if there is no such finding. All conviction data received by the department or by the applicant, registrant, or licensee shall be used by the party requesting such data for the exclusive purpose of carrying out the responsibilities of this article, shall not be a public record, shall be privileged, and shall not be disclosed to any other person or agency except to any person or agency which otherwise has a legal right to inspect the file. The department shall be entitled to review any applicant's, registrant's, or licensee's files to determine whether the required background checks have been run and whether all covered employees are qualified. The department shall be authorized to discuss the status of employee background checks with licensees. All such records shall be maintained by the department and the applicant or licensee or registrant pursuant to laws regarding such records and the rules and regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as applicable. As used in this subsection, "conviction data" means a record of a finding, verdict, or plea of guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought, subject to the conditions set forth in subsection (h) of this Code section. Violation of this Code section may subject a licensee or registrant to the revocation of its license or registration.

(m) In connection with an application for licensing or registration under this Code section, the department may use the Nationwide Mortgage Licensing System and Registry, when such service is available, as a channeling agent for the submission of fingerprints to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check. The department is authorized to set forth rules and regulations in order to implement the provisions of this subsection.

(n) The department may deny or revoke a license or registration or otherwise restrict a license or registration if it finds that the mortgage



broker or mortgage lender applicant or any person who is a director, officer, partner, or ultimate equitable owner of 10 percent or more or person who directs the company's affairs or who establishes policy of the applicant has been in one or more of these roles as a mortgage lender, broker, or registrant whose license or registration has been denied, revoked, or suspended within five years of the date of the application.

(o) The department shall not issue a license or registration to and may revoke a license or registration from a mortgage broker or mortgage lender applicant, licensee, or registrant if such person:

(1) Has been the recipient of a final cease and desist order issued within the preceding five years if such order was based on a violation of subsection (h) of this Code section or Code Section 7-1-1002 or 7-1-1013;

(2) Employs any other person against whom a final cease and desist order has been issued within the preceding five years if such order was based on a violation of subsection (h) of this Code section or Code Section 7-1-1002 or 7-1-1013; or

(3) Has had his or her license revoked within five years of the date such person was hired or employs any other person who has had his or her license revoked within five years of the date such person was hired.

(p) Each mortgage broker and mortgage lender applicant, licensee, and registrant shall, before hiring an employee, examine the department's public records to determine that such employee is not subject to the type of cease and desist order described in subsection (o) of this Code section.

(q) Within 90 days after receipt of a completed application and payment of licensing fees prescribed by this article, the department shall either grant or deny the request for license or registration.

(r) A person shall not be indemnified for any act covered by this article or for any fine or penalty incurred pursuant to this article as a result of any violation of the law or regulations contained in this article, due to the legal form, corporate structure, or choice of organization of such person, including, but not limited to, a limited liability company. (Code 1981, § 7-1-1004, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 4; Ga. L. 1996, p. 848, § 17; Ga. L. 1998, p. 795, § 29; Ga. L. 1999, p. 674, § 33; Ga. L. 2000, p. 174, § 27; Ga. L. 2001, p. 4, § 7; Ga. L. 2001, p. 970, § 12; Ga. L. 2002, p. 1220, § 11; Ga. L. 2003, p. 843, § 19; Ga. L. 2004, p. 458, § 13; Ga. L. 2004, p. 631, § 7; Ga. L. 2005, p. 826, § 32/SB 82; Ga. L. 2007, p. 502, § 34/SB 70; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2010, p. 878, § 7/HB 1387; Ga. L. 2011, p. 518, § 14/HB 239; Ga. L. 2011, p. 752, § 7/HB 142.)



**The 2005 amendment**, effective May 5, 2005, in subsection (a), substituted “applicant” for “licensee”; in subsection (d), inserted “or licensee” in two places and inserted “applicant or” following “policy for the” in the first sentence; and, in subsection (f), inserted “initial” in the fourth sentence.

**The 2007 amendment**, effective July 1, 2007, substituted the present provisions of the fourth sentence in subsection (f) for the former fourth sentence which read: “An applicant or licensee may employ a person whose background must be checked and has 90 days from the initial date of hire to obtain satisfactory background data.” and, in subsection (i), substituted “five years” for “three years” twice.

**The 2009 amendment**, effective July 1, 2009, rewrote this Code section.

**The 2010 amendment**, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, revised language and punctuation in paragraph (e)(5) and subsection (j).

**The 2011 amendments.** — The first 2011 amendment, effective July 1, 2011, in paragraph (d)(2), substituted “pleaded guilty” for “pled guilty”; added “and” at the end of paragraph (d)(4); substituted a period for “; and” at the end of paragraph (d)(5); and deleted paragraph (d)(6), which read: “Has met the surety bond requirement pursuant to subsection (c) of Code Section 7-1-1003.2”; deleted “subsequent to January 1, 2010,” following “this article” in paragraph (e)(5); in subsection (h), in the second sentence, substituted “Other than a mortgage loan originator, for” for “For” at the beginning, inserted “or nolo contendere” near the beginning, inserted “or an adjudication or sentence was otherwise withheld or not entered on the

charge” near the middle, inserted “or until probation, sentence, or both probation and sentence of a first offender have been successfully completed and documented” near the end, deleted the former last sentence, which read: “Any pardon of a conviction shall not be a conviction for purposes of this subsection.”, and added the last sentence; substituted the present provisions of subsection (o) for the former provisions, which read: “The department shall not issue a license or registration to and may revoke a license or registration from a mortgage broker or mortgage lender applicant, licensee, or registrant if such person employs any other person against whom a final cease and desist order has been issued within the preceding five years if such order was based on a violation of Code Section 7-1-1013 or based on the conducting of a mortgage business; for a violation of Code Section 7-1-1002, subsection (h) of Code Section 7-1-1004, or Code Section 7-1-1013; or whose license was revoked within five years of the date such person was hired. Each mortgage broker and mortgage lender applicant, licensee, and registrant shall, before hiring an employee, examine the department’s public records to determine that such employee is not subject to the type of cease and desist order described in this subsection.”; added subsection (p); and redesignated former subsections (p) and (q) as present subsections (q) and (r), respectively. The second 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (j)(1).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2009, “paragraph (1) of this subsection” was substituted for “paragraph (1) of this Code section” in paragraph (e)(4).

## 7-1-1004.1. Reports of condition.

Each mortgage broker and mortgage lender shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the department and the Nationwide Mortgage Licensing System and Registry may require. (Code 1981, § 7-1-1004.1, enacted by Ga. L. 2009, p. 252, § 1/HB 312.)

**Effective date.** — This Code section became effective July 1, 2009.

### **7-1-1004.2. Licensees' ability to challenge information.**

The department shall establish a process whereby licensees may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the department. (Code 1981, § 7-1-1004.2, enacted by Ga. L. 2009, p. 252, § 1/HB 312.)

**Effective date.** — This Code section became effective July 1, 2009.

### **7-1-1004.3. Visibility requirement for unique identifier of individuals originating residential mortgage loan.**

The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards, websites, and any other documents as established by rule, regulation, or order of the department. (Code 1981, § 7-1-1004.3, enacted by Ga. L. 2009, p. 252, § 1/HB 312.)

**Effective date.** — This Code section became effective July 1, 2009.

### **7-1-1005. Renewal of licenses and registrations; expiration.**

(a) Except as otherwise specifically provided in this article, all licenses and registrations issued pursuant to this article shall expire on December 31 of each year, and application for renewal shall be made annually on or before December 1 of each year.

(b) Any licensee or registrant making proper application on or before December 1 for the renewal of a license or registration for the following calendar year shall be permitted to continue to operate pending final approval or disapproval of the application if the application for the license or registration is not acted upon prior to January 1. For purposes of this subsection, a "proper application" shall include a requirement that all documentation requesting a renewal has been completed, the requisite continuing education has been successfully obtained, and payment has been made of all outstanding fines and applicable fees required by this article.

(c) No investigation fee shall be payable in connection with the renewal application, but an annual license or registration fee established by regulation of the department to defray the cost of supervision shall be paid with each renewal application, which fee shall not be refunded.

(d) Any person holding a license or registration pursuant to this article who fails to file a proper application for a license or registration renewal for the following license year on or before December 1 and who files an application after December 1 may be required to pay, in addition to the license or registration fees, a fine in an amount to be established by regulations promulgated by the department.

(e) The minimum standards for license renewal for mortgage loan originators shall include:

(1) The mortgage loan originator continues to meet the minimum standards for license issuance;

(2) The mortgage loan originator has satisfied the annual continuing education requirements;

(3) The mortgage loan originator has paid all required fees for renewal of the license; and

(4) The mortgage loan originator is in compliance with any and all written orders issued by the department.

(f) The department may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry. (Code 1981, § 7-1-1005, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 5; Ga. L. 2000, p. 174, § 28; Ga. L. 2001, p. 970, § 13; Ga. L. 2005, p. 826, § 33/SB 82; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2011, p. 518, § 15/HB 239.)

**The 2005 amendment**, effective May 5, 2005, deleted the proviso which read: “; provided, however, that licenses and registrations issued for the calendar year 2000 will expire on June 30, 2001” at the end of subsection (a).

**The 2009 amendment**, effective July 1, 2009, substituted “December 1” for “April 1” four times in this Code section; near the middle of subsection (a), substituted “December 31” for “June 30”; in subsection (b), inserted “demonstration that all necessary continuing education has been successfully completed,” near the beginning, and substituted “January 1” for “July 1” at the end; and added subsections (e) and (f).

**The 2011 amendment**, effective July 1, 2011, substituted the present provisions of subsection (b) for the former provisions, which read: “Any licensee or registrant making proper application, including all supporting documents, dem-

onstration that all necessary continuing education has been successfully completed, moneys owed to the department, and all applicable fees required by this article and any regulations promulgated by the department, for a license or registration renewal to operate during the following license year and filing the application prior to December 1 shall be permitted to continue to operate pending final approval or disapproval of the application for the license or registration renewal for the following year if final approval or disapproval is not granted prior to January 1.”; deleted “or prorated if the renewal application is approved” at the end of subsection (c); deleted “, including the proper fee accompanying the application,” following “license year” in subsection (d); in subsection (e), deleted “and” at the end of paragraph (e)(2), substituted “; and” for a period at the end of paragraph (e)(3), and added paragraph (e)(4); and



deleted the former first sentence in subsection (f), which read: "The license of a mortgage loan originator failing to satisfy

the minimum standards for license renewal shall expire."

**7-1-1006. Contents of license; posting of license; transferring of license; transacting business under other name; change of address; opening a new additional office without prior approval; approval of branch manager.**

(a) Each license issued under this article shall state the name of the licensee.

(b) A licensee shall post a copy of such license in a conspicuous place in each place of business of the licensee.

(c) A license shall not be transferred or assigned.

(d) No licensee shall transact business under any name or names other than those designated in the records of the department.

(e) For mortgage brokers and mortgage lenders, each licensee shall notify the department in writing of any change in the address of the principal place of business or of any additional location of business in Georgia, any change in registered agent or registered office, any change of executive officer, contact person for consumer complaints, or ultimate equitable owner of 10 percent or more of any corporation or other entity licensed under this article, or of any material change in the licensee's financial statement. Notice of changes shall be received by the department no later than 30 business days after the change is effective.

(f) No mortgage broker or mortgage lender shall open a new additional office in Georgia without prior approval of the department. Applications for such additional office shall be made in writing on a form prescribed by the department and shall be accompanied by payment of a \$350.00 nonrefundable application fee. The application shall be approved unless the department finds that the applicant has not conducted business under this article efficiently, fairly, in the public interest, and in accordance with law. The application shall be deemed approved if notice to the contrary has not been mailed by the department to the applicant within 45 days of the date the application is received by the department.

(g) All branch managers in Georgia shall be approved by the department. A mortgage broker or mortgage lender may place a new branch manager subject to the department's approval but shall file for approval within 15 days of the placement and shall remove the person immediately should the department deny approval. (Code 1981, § 7-1-1006, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 97, § 7; Ga. L. 1994, p. 570, § 6; Ga. L. 1999, p. 674, § 34; Ga. L. 2000, p. 174, § 29; Ga. L.

2005, p. 826, § 34/SB 82; Ga. L. 2007, p. 502, § 35/SB 70; Ga. L. 2009, p. 252, § 1/HB 312.)

**The 2005 amendment**, effective May 5, 2005, substituted “of the main office or an approved branch location” for “or an addition of a new location” in the next-to-last sentence in subsection (e); and in subsection (f), substituted “open a new additional” for “open an additional” in the first sentence and deleted the former last sentence.

**The 2007 amendment**, effective July 1, 2007, in subsection (e), substituted “executive officer,” for “principal officer, director,” in the first sentence, deleted the second sentence which read: “Notice of a change in address of the main office or an approved branch location shall be submitted no later than 15 days before the change is made.”, and deleted “other” following “Notice of” at the beginning of the last sentence and substituted “45 days” for “30 days” near the end of the last sentence of subsection (f).

**The 2009 amendment**, effective July 1, 2009, in subsection (c), substituted “shall” for “may”; in subsection (d), substituted “or names other than those” for “other than that” and substituted “records of the department” for “license” at the end; in subsection (e), substituted “For mortgage brokers and mortgage lenders, each” for “Each” at the beginning of the first sentence and substituted “shall” for “must” near the beginning of the last sentence; in subsection (f), substituted “mortgage broker or mortgage lender” for “licensee” at the beginning of the first sentence; and, in subsection (g), substituted “shall” for “must” three times and substituted “mortgage broker or mortgage lender” for “licensee” at the beginning of the second sentence.

## JUDICIAL DECISIONS

**Cited** in *Hartford Fire Ins. Co. v. iFreedom Direct Corp.*, 312 Ga. App. 262, 718 S.E.2d 103 (2011), cert. denied, No. S12C0408, 2012 Ga. LEXIS 246 (Ga. 2012).

### **7-1-1007. Licensee to give notice of certain actions brought against it by a creditor or borrower; notice to the department of cancellation of bond.**

(a) A licensee shall give notice to the department by registered or certified mail or statutory overnight delivery of any action which may be brought against it by any creditor or borrower where such action is brought under this article, involves a claim against the bond filed with the department for the purposes of compliance with Code Section 7-1-1003.2 or 7-1-1004, or involves a claim for damages in excess of \$25,000.00 for a mortgage broker or mortgage loan originator and \$250,000.00 for a lender and of any judgment which may be entered against it by any creditor or any borrower or prospective borrower, with details sufficient to identify the action or judgment, within 30 days after the commencement of any such action or the entry of any such judgment.

(b) A corporate surety shall, within ten days after it pays any claim to any claimant, give notice to the department by registered or certified mail or statutory overnight delivery of such payment with details

sufficient to identify the claimant and the claim or judgment so paid. Whenever the principal sum of such bond is reduced by one or more recoveries or payments thereon, the mortgage loan originator, mortgage broker, or mortgage lender shall furnish a new or additional bond so that the total or aggregate principal sum of such bond or bonds shall equal the sum required under Code Section 7-1-1003.2 or 7-1-1004 or shall furnish an endorsement duly executed by the corporate surety reinstating the bond to the required principal sum thereof.

(c) A bond filed with the department for the purpose of compliance with Code Section 7-1-1003.2 or 7-1-1004 shall not be canceled by either the mortgage loan originator, mortgage broker, or mortgage lender or the corporate surety except upon notice to the department by registered or certified mail or statutory overnight delivery with return receipt requested, the cancellation to be effective not less than 30 days after receipt by the department of such notice and only with respect to any breach of condition occurring after the effective date of such cancellation.

(d) A licensee or registrant shall, within ten days after knowledge of the event, report in writing to the department:

(1) Any knowledge or discovery of an act prohibited by Code Section 7-1-1013;

(2) The discharge of any employee for dishonest or fraudulent acts; and

(3) Any administrative, civil, or criminal action initiated against the licensee, registrant, or any of its control persons by any government entity.

Any person reporting such an event shall be protected from civil liability as provided in Code Section 7-1-1009. (Code 1981, § 7-1-1007, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1999, p. 674, § 35; Ga. L. 2000, p. 1589, § 3; Ga. L. 2002, p. 1220, § 12; Ga. L. 2009, p. 252, § 1/HB 312.)

**The 2009 amendment**, effective July 1, 2009, substituted “Code Section 7-1-1003.2” for “Code Section 7-1-1003” throughout this Code section; in the middle of subsection (a), substituted “mortgage broker or mortgage loan originator” for “broker”; in the second sentence of subsection (b), substituted “mortgage loan originator, mortgage broker, or mortgage

lender” for “licensee”; in subsection (c), substituted “shall” for “may” and substituted “mortgage loan originator, mortgage broker, or mortgage lender” for “licensee”; and, in subsection (d), deleted “and” at the end of paragraph (d)(1), substituted “; and” for a period at the end of paragraph (d)(2), and added paragraph (d)(3).



**7-1-1008. Acquisition of 10 percent or more of the voting shares or of the ownership of any other entity licensed or registered to conduct business under this article.**

(a) Except as provided in this Code section, no person shall acquire directly or indirectly 10 percent or more of the voting shares of a corporation or 10 percent or more of the ownership of any other entity licensed or registered to conduct business as a mortgage broker or mortgage lender under this article unless it first:

(1) Files an application with the department in such form as the department may prescribe from time to time;

(2) Delivers such other information to the department as the department may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors and officers, if a corporation, and its members, if applicable, and of any proposed new directors, officers, or members of the licensee or registrant; and

(3) Pays such application fee as the department may prescribe.

(b) Upon the filing and investigation of an application, the department shall permit the applicant to acquire the interest in the mortgage broker or mortgage lender licensee or registrant if it finds that the applicant and its members, if applicable, its directors and officers, if a corporation, and any proposed new directors and officers have the financial responsibility, character, reputation, experience, and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. The department shall grant or deny the application within 60 days from the date a completed application accompanied by the required fee is filed unless the period is extended by order of the department reciting the reasons for the extension. If the application is denied, the department shall notify the applicant of the denial and the reasons for the denial.

(c) The provisions of this Code section shall not apply to:

(1) The acquisition of an interest in a licensee or registrant directly or indirectly, including an acquisition by merger or consolidation by or with a person licensed or registered by this article or a person exempt from this article under Code Section 7-1-1001;

(2) The acquisition of an interest in a mortgage broker or mortgage lender licensee or registrant directly or indirectly, including an acquisition by merger or consolidation by or with a person affiliated through common ownership with the licensee or registrant; or

(3) The acquisition of an interest in a mortgage broker or mortgage lender licensee or registrant by a person by bequest, descent, or survivorship or by operation of law.

The person acquiring an interest in a mortgage broker or mortgage lender licensee or registrant in a transaction which is exempt from filing an application by this subsection shall send written notice to the department of such acquisition within 30 days of the closing of such transaction. (Code 1981, § 7-1-1008, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 7; Ga. L. 2007, p. 502, § 36/SB 70; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2011, p. 518, § 16/HB 239.)

**The 2007 amendment**, effective July 1, 2007, in subsection (a), deleted “on and after July 1, 1993,” following “Code section” and substituted “10 percent” for “25 percent” twice.

**The 2009 amendment**, effective July 1, 2009, inserted “mortgage broker or mortgage lender” throughout this Code

section and inserted “as a” near the end of the introductory paragraph of subsection (a).

**The 2011 amendment**, effective July 1, 2011, inserted “or registrant” throughout this Code section; and inserted “or registered” in the introductory language of subsection (a) and in paragraph (c)(1).

**7-1-1009. Maintenance of books, accounts, and records; investigation and examination of licensees and registrants by department; confidentiality; exemptions from civil liability.**

(a) Mortgage brokers and mortgage lenders required to be licensed or registered under this article shall maintain at their offices or such other location as the department shall permit such books, accounts, and records as the department may reasonably require in order to determine whether such mortgage brokers and mortgage lenders are complying with the provisions of this article and rules and regulations adopted in furtherance thereof. Such books, accounts, and records shall be maintained separately and distinctly from any other personal or unrelated business matters in which the mortgage brokers and mortgage lenders are involved.

(b) The department may, by its designated officers and employees, as often as it deems necessary, but at least once every 24 months, investigate and examine the affairs, business, premises, and records of any mortgage broker or mortgage lender required to be licensed or registered under this article insofar as such affairs, business, premises, and records pertain to any business for which a license or registration is required by this article. Notwithstanding the provisions of this subsection, the department has the discretion to examine a mortgage broker or mortgage lender less frequently, provided that its record of complaints, comments, or other information demonstrates that mortgage broker’s or mortgage lender’s ability to meet the standards of Code Sections 7-1-1003, 7-1-1003.2, and 7-1-1004. In the case of registrants, the department shall not be required to conduct such examinations if it determines that the registrant has been adequately examined by another bank regulatory agency. In order to avoid unnecessary dupli-

cation of examinations, the department may accept examination reports performed and produced by other state or federal agencies, unless the department determines that the examinations are not available or do not provide information necessary to fulfill the responsibilities of the department under this article.

(c) In addition to any authority allowed under this article, the department shall be authorized to conduct investigations and examinations of mortgage loan originators as follows:

(1) For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this article, the department shall have the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including, but not limited to:

(A) Criminal, civil, and administrative history information, including nonconviction data;

(B) Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. Section 1681a(f); and

(C) Any other documents, information, or evidence the department deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence;

(2) For the purposes of investigating violations or complaints, or for the purposes of examination, the department may review, investigate, or examine any mortgage loan originator licensee, individual, or person subject to this article as often as necessary in order to carry out the purposes of this article. The department may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the department deems relevant to the inquiry;

(3) Each mortgage loan originator licensee, individual, or person subject to this article shall make available to the department upon request the books and records relating to the activities of a mortgage loan originator;

(4) Each mortgage loan originator subject to this article shall make or compile reports or prepare other information as directed by the



commissioner in order to carry out the purposes of this subsection, including, but not limited to:

(A) Accounting compilations;

(B) Information lists and data concerning loan transactions in a format prescribed by the department; or

(C) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate a mortgage loan originator;

(5) In making any examination or investigation authorized by this article, the department may control access to any documents and records of the licensee or person under investigation. In order to carry out the purposes of this Code section, the department may:

(A) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this Code section;

(B) Accept and rely on examination or investigation reports made by other government officials, within or without this state; and

(C) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this article in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of examination, report of investigation, or other writing of the department;

(6) The authority to investigate provided for in this subsection shall remain in effect whether such licensee, individual, or person subject to this article acts or claims to act under any licensing or registration law of this state or claims to act without such authority; and

(7) No mortgage loan originator licensee, individual, or person subject to investigation or examination under this article shall knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(d) The department, at its discretion, may:

(1) Make such public or private investigations within or outside of this state as it deems necessary to determine whether any person has violated or is about to violate this article or any rule, regulation, or order under this article, to aid in the enforcement of this article, or to

assist in the prescribing of rules and regulations pursuant to this article;

(2) Require or permit any person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated;

(3) Disclose information concerning any violation of this article or any rule, regulation, or order under this article, provided the information is derived from a final order of the department; and

(4) Disclose the imposition of an administrative fine or penalty under this article.

(e)(1) For the purpose of conducting any investigation as provided in this Code section, the department shall have the power to administer oaths, to call any party to testify under oath in the course of such investigations, to require the attendance of witnesses, to require the production of books, records, and papers, and to take the depositions of witnesses; and for such purposes, the department is authorized to issue a subpoena for any witness or for the production of documentary evidence. Such subpoenas may be served by certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address, by examiners appointed by the department, or shall be directed for service to the sheriff of the county where such witness resides or is found or where the person in custody of any books, records, or paper resides or is found. The required fees and mileage of the sheriff, witness, or person shall be paid from the funds in the state treasury for the use of the department in the same manner that other expenses of the department are paid.

(2) The department may issue and apply to enforce subpoenas in this state at the request of a government agency regulating mortgage lenders or brokers of another state if the activities constituting the alleged violation for which the information is sought would be a violation of this article if the activities had occurred in this state.

(f) In case of refusal to obey a subpoena issued under this article to any person, a superior court of appropriate jurisdiction, upon application by the department, may issue to the person an order requiring him or her to appear before the court to show cause why he or she should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished as contempt by the court.

(g) Examinations and investigations conducted under this article and information obtained by the department in the course of its duties under this article are confidential, except as provided in this subsection, pursuant to the provisions of Code Section 7-1-70. In addition to the exceptions set forth in subsection (b) of Code Section 7-1-70 and in

paragraphs (3) and (4) of subsection (d) of this Code section, the department is authorized to share information obtained under this article with other state and federal regulatory agencies or law enforcement authorities. In the case of such sharing, the safeguards to confidentiality already in place within such agencies or authorities shall be deemed adequate. The commissioner or an examiner specifically designated may disclose such limited information as is necessary to conduct a civil or administrative investigation or proceeding. Information contained in the records of the department which is not confidential and may be made available to the public either on the department's website or upon receipt by the department of a written request shall include:

(1) For mortgage brokers and mortgage lenders, the name, business address, and telephone, facsimile, and license numbers of a licensee or registrant;

(2) For mortgage brokers and mortgage lenders, the names and titles of the principal officers;

(3) For mortgage brokers and mortgage lenders, the name of the owner or owners thereof;

(4) For mortgage brokers and mortgage lenders, the business address of a licensee's or registrant's agent for service; and

(5) The terms of or a copy of any bond filed by a licensee or registrant.

(h) In the absence of malice, fraud, or bad faith, a person shall not be subject to civil liability arising from the filing of a complaint with the department or furnishing other information required by this Code section or required by the department under the authority granted in this article. No civil cause of action of any nature shall arise against such person:

(1) For any information relating to suspected prohibited acts furnished to or received from law enforcement officials, their agents, or employees or to or from other regulatory or licensing authorities;

(2) For any such information furnished to or received from other persons subject to the provisions of this title; or

(3) For any such information furnished in complaints filed with the department.

(i) The commissioner or any employee or agent shall not be subject to civil liability, and no civil cause of action of any nature exists against such persons arising out of the performance of activities or duties under this article or by publication of any report of activities under this Code section. (Code 1981, § 7-1-1009, enacted by Ga. L. 1993, p. 543, § 1; Ga.



L. 1996, p. 848, § 18; Ga. L. 1998, p. 795, § 30; Ga. L. 1999, p. 674, § 36; Ga. L. 2000, p. 174, § 30; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 970, § 14; Ga. L. 2003, p. 843, § 20; Ga. L. 2007, p. 502, § 37/SB 70; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2010, p. 878, § 7/HB 1387.)

**The 2007 amendment**, effective July 1, 2007, substituted “separately and distinctly from any other personal or unrelated business matters in which the” for “apart and separate from any other business in which such” in the last sentence of subsection (a) and substituted “The department shall annually” for “Beginning August 1, 2001, and at least annually thereafter, the department shall” at the beginning of the sixth sentence in subsection (f).

**The 2009 amendment**, effective July 1, 2009, in subsection (a), in the first sentence, substituted “Mortgage brokers and mortgage lenders” for “Any person” at the beginning, substituted “their” for “its”,

and substituted “mortgage brokers and mortgage lenders are” for “person is” twice; in subsection (b), substituted “mortgage broker or mortgage lender” for “person” in the first and second sentences and substituted “mortgage broker’s or mortgage lender’s” for “person’s” in the second sentence; added subsection (c); redesignated former subsections (c) through (h) as present (d) through (i), respectively; rewrote subsection (g); and, in subsections (h) and (i), substituted “shall not be” for “is not” near the beginning.

**The 2010 amendment**, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted “facsimile” for “fax” in paragraph (g)(1).

## 7-1-1010. Annual financial statements.

(a) If a mortgage broker is a United States Department of Housing and Urban Development loan correspondent, such broker shall also submit to the department the audit that is required for the United States Department of Housing and Urban Development. The department may require the mortgage broker to have made an audit of the books and affairs of the licensed or registered business and submit to the department an audited financial statement if the department finds that such an audit is necessary to determine whether the mortgage broker is complying with the provisions of this article and the rules and regulations adopted in furtherance of this article.

(b) Each mortgage lender licensed or registered under this article shall at least once each year have made an audit of the books and affairs of the licensed or registered business and submit to the department at renewal an audited financial statement, except that a mortgage lender licensed or registered under this article which is a subsidiary shall comply with this provision by annually providing a consolidated audited financial statement of its parent company and a financial statement, which may be unaudited, of the licensee or registrant which is prepared in accordance with generally accepted accounting principles. A lender who utilizes a bond in lieu of an audit need not supply such audit, unless specially required by the department. An audit shall be less than 15 months old to be acceptable. The department may by regulation establish additional minimum standards for audits and reports under this Code section. (Code 1981, § 7-1-1010, enacted by Ga.

L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 8; Ga. L. 1996, p. 848, § 19; Ga. L. 1999, p. 674, § 37; Ga. L. 2000, p. 174, § 31; Ga. L. 2004, p. 458, § 14; Ga. L. 2009, p. 252, § 1/HB 312.)

**The 2009 amendment**, effective July 1, 2009, substituted “shall” for “must” in the first sentence of subsection (a) and in the next-to-last sentence of subsection (b).

### 7-1-1011. Annual fees.

(a) The department may, by regulation, prescribe annual fees to be paid by licensees and registrants, which fees shall be set at levels necessary to defray costs and expenses incurred by the state in providing the examinations and supervision required by this article and its federally mandated participation in the Nationwide Mortgage Licensing System and Registry, and which fees may vary according to whether a person is a licensee or registrant or is a mortgage loan originator, mortgage broker, or a mortgage lender.

(b)(1) As used in this subsection, the term “collecting agent” means the person listed as the secured party on a security deed or other loan document that establishes a lien on the residential real property taken as collateral at the time of the closing of the mortgage loan transaction.

(2) There shall be imposed on the closing of every mortgage loan subject to regulation under this article which, as defined in Code Section 7-1-1000, includes all mortgage loans, whether or not closed by a mortgage broker or mortgage lender licensee or registrant, a fee of \$10.00. The fee shall be paid by the borrower to the collecting agent at the time of closing of the mortgage loan transaction. The collecting agent shall remit the fee to the department at the time and in the manner specified by regulation of the department. Revenue collected by the department pursuant to this subsection shall be deposited in the general fund of the state.

(3) The fee imposed by this subsection shall be a debt from the borrower to the collecting agent until such assessment is paid and shall be recoverable at law in the same manner as authorized for the recovery of other debts. Any collecting agent who neglects, fails, or refuses to collect the fee imposed by this subsection shall be liable for the payment of the fee. (Code 1981, § 7-1-1011, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 9; Ga. L. 1995, p. 673, § 34; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2010, p. 9, § 1-18/HB 1055.)

**The 2009 amendment**, effective July 1, 2009, in subsection (a), inserted “and its federally mandated participation in the Nationwide Mortgage Licensing System and Registry,” in the middle, substituted “mortgage loan originator, mortgage broker,” for “mortgage broker”, and deleted “and according to the class of license issued to a mortgage broker or mortgage lender” following “lender” at the end; and,

in paragraph (b)(2), inserted “mortgage broker or mortgage lender” near the end of the first sentence.

The 2010 amendment, effective May

12, 2010, substituted “\$10.00” for “\$6.50” at the end of the first sentence of paragraph (b)(2).

## 7-1-1012. Rules and regulations.

**Editor’s notes.** — Ga. L. 2009, p. 252, § 1, effective July 1, 2009, reenacted this Code section without change. Refer to bound volume for text of this Code section.

## 7-1-1013. Prohibition of certain acts.

It shall be prohibited for any person transacting a mortgage business in or from this state, including any person required to be licensed or registered under this article and any person exempted from the licensing or registration requirements of this article under Code Section 7-1-1001, to:

(1) Misrepresent the material facts, make false statements or promises, or submit false statements or documents likely to influence, persuade, or induce an applicant for a mortgage loan, a mortgagee, or a mortgagor to take a mortgage loan, or, through agents or otherwise, pursue a course of misrepresentation by use of fraudulent or unauthorized documents or other means to the department or anyone;

(2) Misrepresent or conceal or cause another to misrepresent or conceal material factors, terms, or conditions of a transaction to which a mortgage lender or broker is a party, pertinent to an applicant or application for a mortgage loan or a mortgagor;

(3) Fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan;

(4) Improperly refuse to issue a satisfaction of a mortgage loan;

(5) Fail to account for or deliver to any person any personal property obtained in connection with a mortgage loan such as money, funds, deposit, check, draft, mortgage, or other document or thing of value which has come into the possession of a licensee or registrant and which is not the property of the licensee or registrant, or which the mortgage lender or broker is not in law or at equity entitled to retain;

(6) Engage in any transaction, practice, or course of business which is not in good faith or fair dealing, or which operates a fraud upon any person, in connection with the attempted or actual making of, purchase of, transfer of, or sale of any mortgage loan;

(7) Engage in any fraudulent home mortgage underwriting practices;



(8) Induce, require, or otherwise permit the applicant for a mortgage loan or mortgagor to sign a security deed, note, loan application, or other pertinent financial disclosure documents with any blank spaces to be filled in after it has been signed, except blank spaces relating to recording or other incidental information not available at the time of signing;

(9) Make, directly or indirectly, any residential mortgage loan with the intent to foreclose on the borrower's property. For purposes of this paragraph, there shall be a presumption that a person has made a residential mortgage loan with the intent to foreclose on the borrower's property if the following circumstances can be demonstrated:

(A) Lack of substantial benefit to the borrower;

(B) Lack of probability of full payment of the loan by the borrower; and

(C) A significant proportion of similarly foreclosed loans by such person;

(10) Provide an extension of credit or collect a mortgage debt by extortionate means; or

(11) Purposely withhold, delete, destroy, or alter information requested by an examiner of the department or make false statements or material misrepresentations to the department or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the department or another governmental agency. (Code 1981, § 7-1-1013, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1996, p. 848, § 20; Ga. L. 1999, p. 674, § 38; Ga. L. 2000, p. 174, § 32; Ga. L. 2005, p. 826, § 35/SB 82; Ga. L. 2009, p. 252, § 1/HB 312.)

**The 2005 amendment**, effective May 5, 2005, rewrote paragraph (1); inserted "transfer of," near the end of paragraph (6); and deleted "during the course of an examination or on any application or renewal form sent to the department" at the end of paragraph (11).

**The 2009 amendment**, effective July 1, 2009, substituted "shall be" for "is" in the introductory paragraph; in paragraph (5), substituted "a licensee or registrant"

for "the mortgage lender or broker" and substituted "licensee or registrant" for "mortgage lender or broker"; in the second sentence of paragraph (9), substituted "shall be" for "is"; and, in paragraph (11), added "or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the department or another governmental agency" at the end.

## JUDICIAL DECISIONS

**Section does not apply to foreclosure proceedings.** — The plain language of O.C.G.A. § 7-1-1013 limits the statute's applicability to the actions taken

to make, purchase, transfer, or sell mortgage loans. The Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1000 et seq., is not applicable in foreclosure proceedings.

Roylston v. Bank of Am., N.A., 290 Ga. App. 556, 660 S.E.2d 412 (2008).

**Acts not covered by bond.** — Trial court erred in granting a purchaser summary judgment and in denying an insurer summary judgment in the purchaser's action to recover against a bond the insurer issued to a mortgage lender under the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1000 et seq., because the acts that gave rise to the judgment the

purchaser obtained against the lender occurred before the bond was in effect, and the lender's failure to pay the judgment was not an act that authorized recovery against the bond; the bond did not contain a specific covenant extending liability to acts prior to the bond's execution. Hartford Fire Ins. Co. v. iFreedom Direct Corp., 312 Ga. App. 262, 718 S.E.2d 103 (2011), cert. denied, No. S12C0408, 2012 Ga. LEXIS 246 (Ga. 2012).

#### **7-1-1014. Regulations governing disclosure required to applicants for mortgage loans.**

**Editor's notes.** — Ga. L. 2009, p. 252, § 1, effective July 1, 2009, reenacted this

Code section without change. Refer to bound volume for text of this Code section.

### **JUDICIAL DECISIONS**

**Cited in** Hartford Fire Ins. Co. v. iFreedom Direct Corp., 312 Ga. App. 262, 718 S.E.2d 103 (2011).

#### **7-1-1015. Rules relative to escrow accounts.**

The department may promulgate rules with respect to the placement in escrow accounts by any person required to be licensed or registered by this article of any money, fund, deposit, check, or draft entrusted to it by any persons dealing with it as a residential mortgage loan originator, mortgage broker, mortgage lender, or servicer. (Code 1981, § 7-1-1015, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 2009, p. 252, § 1/HB 312.)

**The 2009 amendment**, effective July 1, 2009, substituted "mortgage loan origi-

nator, mortgage broker, mortgage" for "mortgage broker," near the end.

#### **7-1-1016. Regulations relative to advertising.**

In addition to such other rules, regulations, and policies as the department may promulgate to effectuate the purpose of this article, the department shall prescribe regulations governing the advertising of mortgage loans, including, without limitation, the following requirements:

(1)(A) Advertisements for loans regulated under this article shall not be false, misleading, or deceptive. No person whose activities are regulated under this article shall advertise in any manner so as to indicate or imply that its interest rates or charges for loans are in any way "recommended," "approved," "set," or "established" by the state or this article.

(B) An advertisement shall not include an individual's loan number, loan amount, or other publicly available information unless it is clearly and conspicuously stated in boldface type at the beginning of the advertisement that the person disseminating it is not authorized by, in sponsorship with, or otherwise affiliated with the individual's lender, which shall be identified by name. Such an advertisement shall also state that the loan information contained therein was not provided by the recipient's lender;

(2) All advertisements, including websites, disseminated by a licensee or a registrant in this state by any means shall contain the name, license number, Nationwide Mortgage Licensing System and Registry unique identifier, and an office address of such licensee or registrant, which shall conform to a name and address on record with the department; and

(3) No mortgage broker or mortgage lender licensee shall advertise its services in Georgia in any media disseminated in this state, whether print or electronic, without the words "Georgia Residential Mortgage Licensee" or, for those advertisers licensed in more than one state, a listing of Georgia as a state in which the advertiser is licensed. (Code 1981, § 7-1-1016, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 11; Ga. L. 2002, p. 1220, § 13; Ga. L. 2007, p. 502, § 38/SB 70; Ga. L. 2009, p. 252, § 1/HB 312.)

**The 2007 amendment**, effective July 1, 2007, redesignated former paragraph (1), as present subparagraph (1)(A); added subparagraph (1)(B); and substituted "by a licensee or a registrant in this state by any means" for "in this state by a licensee or a registrant" in paragraph (2).

**The 2009 amendment**, effective July 1, 2009, in the introductory paragraph, inserted two commas; in subparagraph (1)(A), substituted "shall" for "may" twice

and substituted a period for a semicolon at the end; in subparagraph (1)(B), substituted "boldface" for "bold-faced" in the middle of the first sentence and substituted a semicolon for a period at the end; in paragraph (2), inserted ", including websites," and inserted "Nationwide Mortgage Licensing System and Registry unique identifier,,"; and, in paragraph (3), inserted "mortgage broker or mortgage lender" at the beginning.

## JUDICIAL DECISIONS

**Cited in** Hartford Fire Ins. Co. v. iFreedom Direct Corp., 312 Ga. App. 262, 718 S.E.2d 103 (2011).

### **7-1-1017. Suspension or revocation of licenses, registrations, or mortgage broker education approval; notice; judicial review; effect on preexisting contract.**

(a)(1) The department may suspend or revoke an original or renewal license, registration, or mortgage broker education approval on any ground on which it might refuse to issue an original license, regis-



tration, or approval or for a violation of any provision of this article or of Chapter 6A of this title or any rule or regulation issued under this article or under Chapter 6A of this title, including failure to provide fees on a timely basis, or for failure of the licensee or registrant to pay, within 30 days after it becomes final, a judgment recovered in any court within this state by a claimant or creditor in an action arising out of the licensee's or registrant's business in this state as a mortgage loan originator, mortgage lender, or mortgage broker or for violation of a final order previously issued by the department.

(2) Where an applicant or licensee has been found not in compliance with an order for child support as provided in Code Section 19-6-28.1 or 19-11-9.3, such action shall be sufficient grounds for refusal of a license or suspension of a license. In such actions, the hearing and appeal procedures provided for in those Code sections shall be the only such procedures required under this article. The department shall be permitted to share, without liability, information on its applications or other forms with appropriate state agencies to assist them in recovering child support when required by law.

(3) Where an applicant or licensee has been found to be a borrower in default as provided in Code Section 20-3-295, such action shall be sufficient grounds for refusal of a license or suspension of a license. In such actions, the hearing and appeal procedures provided for in Code Section 20-3-295 shall be the only such procedures required under this article.

(b) Notice of the department's intention to enter an order denying an application for a license or registration under this article or of an order suspending or revoking a license or registration under this article shall be given to the applicant, licensee, or registrant in writing, sent by registered or certified mail or statutory overnight delivery addressed to the principal place of business of such applicant, licensee, or registrant. Within 20 days of the date of the notice of intention to enter an order of denial, suspension, or revocation under this article, the applicant, licensee, or registrant may request in writing a hearing to contest the order. If a hearing is not requested in writing within 20 days of the date of such notice of intention, the department shall enter a final order regarding the denial, suspension, or revocation. Any final order of the department denying, suspending, or revoking a license or registration shall state the grounds upon which it is based and shall be effective on the date of issuance. A copy thereof shall be forwarded promptly by registered or certified mail or statutory overnight delivery addressed to the principal place of business of such applicant, licensee, or registrant. If a person refuses to accept service of the notice or order by registered or certified mail or statutory overnight delivery, the notice or order shall be served by the commissioner or the commissioner's authorized

representative under any other method of lawful service; and the person shall be personally liable to the commissioner for a sum equal to the actual costs incurred to serve the notice or order. This liability shall be paid upon notice and demand by the commissioner or the commissioner's representative and shall be assessed and collected in the same manner as other fees or fines administered by the commissioner.

(c) A licensee or registrant may, at the discretion of and with the consent of the department, agree to a voluntary suspension of its license or registration for a period of time to be agreed upon by the parties. Such order of suspension shall be considered a final order and shall be forwarded to the licensee or registrant in the same manner as any other final order. Grounds for such a voluntary suspension shall be the same as provided in subsection (a) of this Code section, and the licensee or registrant may waive its right to an administrative hearing before issuance of the suspension. With the consent of the department, a licensee or registrant may voluntarily surrender its license or registration. A voluntary surrender of a license or registration shall have the same effect as a revocation of said license or registration. A voluntary surrender of a license shall be regarded as a final order of the department.

(d) A decision of the department denying a license or registration application, original or renewal, shall be conclusive, except that it may be subject to judicial review under Code Section 7-1-90. A decision of the department suspending or revoking a license or registration shall be subject to judicial review in the same manner as a decision of the department to take possession of the assets and business of a bank under Code Section 7-1-155.

(e) Except as otherwise provided by law, a revocation, suspension, or surrender of a license or registration shall not impair or affect the obligation of a preexisting contract between the licensee and another person.

(f) Nothing in this article shall preclude a mortgage broker or mortgage lender whose license or registration has been suspended or revoked from continuing to service mortgage loans pursuant to servicing contracts in existence at the time of the suspension or revocation for a period not to exceed six months after the date of the final order of the department suspending or revoking the license or registration.

(g) Whenever a person subject to an order of the department fails to comply with the terms of such order which has been properly issued, the department upon notice of three days to such person may, through the Attorney General, petition the principal court for an order directing such person to obey the order of the department within the period of time fixed by the court. Upon the filing of such petition, the court shall



allow a motion to show cause why such motion should not be granted. Whenever, after a hearing upon the merits or after failure of such person to appear when ordered, it shall appear that the order of the department was properly issued, the court shall grant the petition of the department.

(h) Whenever the department initiates an administrative action against a current licensee or an applicant, the department may pursue that action to its conclusion despite the fact that a licensee may withdraw its license or fail to renew it or an applicant may withdraw its application. (Code 1981, § 7-1-1017, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 12; Ga. L. 1996, p. 453, § 2; Ga. L. 1997, p. 485, § 32; Ga. L. 1998, p. 795, § 31; Ga. L. 1998, p. 1094, § 4; Ga. L. 2000, p. 1589, § 3; Ga. L. 2003, p. 843, § 21; Ga. L. 2005, p. 826, § 36/SB 82; Ga. L. 2007, p. 502, § 39/SB 70; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2011, p. 518, § 17/HB 239.)

**The 2005 amendment**, effective May 5, 2005, in paragraph (a)(1), added “or for violation of a final order previously issued by the department” at the end; in subsection (d), inserted “application” in the first sentence; and added subsection (h).

**The 2007 amendment**, effective July 1, 2007, in paragraph (a)(1), substituted “license, registration, or mortgage broker education approval” for “license or registration” and substituted “license, registration, or approval” for “license or registration” and added the last two sentences in subsection (b).

**The 2009 amendment**, effective July

1, 2009, in subsection (a), substituted “mortgage loan originator, mortgage lender,” for “mortgage lender” near the end of paragraph (a)(1) and, in paragraphs (a)(2) and (a)(3), substituted “shall be” for “is” in the first sentence; in subsection (c), added the last three sentences; and, in subsection (f), substituted “mortgage broker or mortgage lender” for “person” at the beginning.

**The 2011 amendment**, effective July 1, 2011, in subsection (h), inserted “or an applicant” near the middle, and added “or an applicant may withdraw its application” at the end.

## JUDICIAL DECISIONS

**Failure to pay judgment.** — Strictly limited to the plain meaning of the language employed in the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1017(a)(1), does not mandate that a mortgage lender pay a judgment within 30 days, but rather, the statute simply gives the Georgia Department of Banking and Finance the discretion to suspend or revoke a mortgage lender’s license for failure to pay, within 30 days of it becoming final, a judgment arising from the lender’s mortgage business; this statutorily-created administrative remedy cannot be extended beyond its plain terms to create an additional private cause of action against a mortgage lender’s bond based on a failure to pay a

judgment. *Hartford Fire Ins. Co. v. iFreedom Direct Corp.*, 312 Ga. App. 262, 718 S.E.2d 103 (2011), cert. denied, No. S12C0408, 2012 Ga. LEXIS 246 (Ga. 2012).

Alternative language used in the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1017(a)(1), stating that the Georgia Department of Banking and Finance may revoke a license for a violation of the Act or failure to pay a final judgment, clearly shows that violating the Act and failing to pay a judgment are separate and distinct matters. *Hartford Fire Ins. Co. v. iFreedom Direct Corp.*, 312 Ga. App. 262, 718 S.E.2d 103 (2011), cert. denied, No. S12C0408, 2012 Ga. LEXIS 246 (Ga. 2012).



**Acts not covered by bond.** — Trial court erred in granting a purchaser summary judgment and in denying an insurer summary judgment in the purchaser's action to recover against a bond the insurer issued to a mortgage lender under the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1000 et seq., because the acts that gave rise to the judgment the purchaser obtained against the lender oc-

curred before the bond was in effect, and the lender's failure to pay the judgment was not an act that authorized recovery against the bond; the bond did not contain a specific covenant extending liability to acts prior to the bond's execution. *Hartford Fire Ins. Co. v. iFreedom Direct Corp.*, 312 Ga. App. 262, 718 S.E.2d 103 (2011), cert. denied, No. S12C0408, 2012 Ga. LEXIS 246 (Ga. 2012).

### **7-1-1018. Cease and desist orders; enforcement procedure; civil penalty; fines.**

(a) Whenever it shall appear to the department that any person required to be licensed or registered under this article or employed by a licensee or who would be covered by the prohibitions in Code Section 7-1-1013 has violated any law of this state or any order or regulation of the department, the department may issue an initial written order requiring such person to cease and desist immediately from such unauthorized practices. Such cease and desist order shall be final 20 days after it is issued unless the person to whom it is issued makes a written request within such 20 day period for a hearing. The hearing shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." A cease and desist order to an unlicensed person that orders such person to cease doing a mortgage business without the appropriate license shall be final 30 days from the date of issuance, and there shall be no opportunity for an administrative hearing. If the proper license or evidence of exemption or valid employment status during the time of the alleged offense is delivered to the department within the 30 day period, the order shall be rescinded by the department. If a cease and desist order is issued to a person who has been sent a notice of bond cancellation and if the bond is reinstated or replaced and such documentation is delivered to the department within the 30 day period following the date of issuance of the order, the order shall be rescinded. If the notice of reinstatement of the bond is not received within the 30 days, the license shall expire at the end of the 30 day period, and the person shall be required to make a new application for license and pay the applicable fees. In the case of an unlawful purchase of mortgage loans, such initial cease and desist order to a purchaser shall constitute the knowledge required under subsection (b) of Code Section 7-1-1002 for any subsequent violations. Any cease and desist order sent to the person at both his or her personal and business addresses pursuant to this Code section that is returned to the department as "refused" or "unclaimed" shall be deemed as received and sufficiently served.

(b) Whenever a person shall fail to comply with the terms of an order of the department which has been properly issued under the circum-

stances, the department, upon notice of three days to such person, may, through the Attorney General, petition the principal court for an order directing such person to obey the order of the department within the period of time as shall be fixed by the court. Upon the filing of such petition, the court shall allow a motion to show cause why it should not be granted. Whenever, after a hearing upon the merits or after failure of such person to appear when ordered, it shall appear that the order of the department was properly issued, the court shall grant the petition of the department.

(c) Any person who violates the terms of any order issued pursuant to this Code section shall be liable for a civil penalty not to exceed \$1,000.00 per violation per day unless otherwise agreed to by the department. In determining the amount of penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of such person, the good faith efforts of such person to comply with the order, the gravity of the violation, the history of previous violations by such person, and such other factors or circumstances as shall have contributed to the violation. The department may at its discretion compromise, modify, or refund any penalty which is subject to imposition or has been imposed pursuant to this Code section. Any person assessed as provided in this subsection shall have the right to request a hearing into the matter within ten days after notification of the assessment has been served upon the person involved; otherwise, such penalty shall be final except as to judicial review as provided in Code Section 7-1-90.

(d) Initial judicial review of the decision of the department entered pursuant to this Code section or Code Section 7-1-1017 shall be available solely in the superior court of the county of domicile of the department.

(e) All penalties and fines recovered by the department as authorized by subsection (g) of this Code section shall be paid into the state treasury to the credit of the general fund; provided, however, that the department at its discretion may remit such amounts recovered, net of the cost of recovery, if it makes an accounting of all such costs and expenses of recovery in the same manner as prescribed for judgments received through derivative actions pursuant to the provisions of Code Section 7-1-441.

(f) For purposes of this Code section, the term "person" also includes any officer, director, employee, agent, or other person participating in the conduct of the affairs of the person subject to the orders issued pursuant to this Code section.

(g) In addition to any other administrative penalties authorized by this article, the department may, by regulation, prescribe administra-

tive fines for violations of this article and of any rules promulgated by the department pursuant to this article. (Code 1981, § 7-1-1018, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 13; Ga. L. 1995, p. 673, § 35; Ga. L. 1997, p. 485, § 33; Ga. L. 1999, p. 674, § 39; Ga. L. 2000, p. 174, § 33; Ga. L. 2001, p. 4, § 7; Ga. L. 2003, p. 843, § 22; Ga. L. 2004, p. 631, § 7; Ga. L. 2005, p. 826, § 37/SB 82; Ga. L. 2007, p. 502, § 40/SB 70; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2011, p. 518, § 18/HB 239; Ga. L. 2013, p. 141, § 7/HB 79.)

**The 2005 amendment**, effective May 5, 2005, in subsections (b) and (c), deleted “required to be licensed under this article” following “person” near the beginning of the first sentence; and in subsection (c), substituted “person involved” for “licensee involved” in the last sentence.

**The 2007 amendment**, effective July 1, 2007, added the last sentence in subsection (a) and inserted “also” near the beginning of subsection (f).

**The 2009 amendment**, effective July 1, 2009, in subsection (a), in the first sentence, deleted “or required to file a notification statement” preceding “under” and deleted “or registrant pursuant to

Code Section 7-1-1001” preceding “or who”, and inserted a comma in the sixth sentence.

**The 2011 amendment**, effective July 1, 2011, in subsection (c), added “per violation per day unless otherwise agreed to by the department” at the end of the first sentence, and deleted the former second sentence, which read: “Each day during which the violation continues shall constitute a separate offense.”

**The 2013 amendment**, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “such person to cease” for “them to cease” in the fourth sentence of subsection (a).

## 7-1-1019. Criminal penalties.

**Editor’s notes.** — Ga. L. 2009, p. 252, § 1, effective July 1, 2009, reenacted this

Code section without change. Refer to bound volume for text of this Code section.

## 7-1-1020. Construction.

Nothing in this article shall limit any statutory or common law right of any person to bring any action in any court for any act involved in the mortgage business or the right of the state to punish any person for any violation of any law. Without limiting the generality of the foregoing, nothing in this article shall be construed as limiting in any manner the application of Part 2 of Article 15 of Chapter 1 of Title 10, the “Fair Business Practices Act of 1975.” (Code 1981, § 7-1-1020, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 2009, p. 252, § 1/HB 312.)

**The 2009 amendment**, effective July 1, 2009, substituted “shall limit” for “lim-

its” near the beginning of the first sentence.

## 7-1-1021. Regulations governing lock-in and commitment agreements.

**Editor’s notes.** — Ga. L. 2009, p. 252, § 1, effective July 1, 2009, reenacted this

Code section without change. Refer to bound volume for text of this Code section.



## CHAPTER 2

## CREDIT UNION DEPOSIT INSURANCE CORPORATION

## 7-2-1. Incorporation procedures.

**Law reviews.** — For comment, “If It Quacks Like a Duck: In Light of Today’s Financial Environment, Should Credit Unions Continue to Enjoy Tax Exemptions?,” see 28 Ga. St. U.L. Rev. 1367 (2012).

## CHAPTER 3

## INDUSTRIAL LOANS

## RESEARCH REFERENCES

**Am. Jur. Proof of Facts.** — Violation of the Truth-In-Lending Act and Regulation Z, 73 POF3d 275.      Class Action for Failure to Disclose under the Truth-In-Lending Act and Regulation Z, 76 POF3d 193.

## 7-3-1. Short title.

## JUDICIAL DECISIONS

**Cited** in Clay v. Oxendine, 285 Ga. App. 50, 645 S.E.2d 553 (2007); Ga. Cash Am. v. Greene, 318 Ga. App. 355, 734 S.E.2d 67 (2012).

## RESEARCH REFERENCES

**ALR.** — State regulation of payday loans, 29 ALR6th 461.

## 7-3-3. Definitions.

## JUDICIAL DECISIONS

**Licensee.** — Trial court properly dismissed a declaratory judgment action brought by a bank and a cash advance lender, which was operating as an agent for the bank, to stop the Georgia Industrial Loan Commissioner from conducting an investigation of their lending activities, because the Commissioner was authorized to conduct an investigation of the two entities’ loan activities, in spite of the lender’s claim that the bank and the lender were operating under the authority of federal banking law. BankWest, Inc. v. Oxendine, 266 Ga. App. 771, 598 S.E.2d 343 (2004).

**“Loan”.**

Sale/leaseback transactions engaged in by consumer cash advance businesses violated the anti-payday lending statute, O.C.G.A. § 16-17-1 et seq., and the Georgia Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., since the state proved that the purported lease back of personal property to the consumer was not based on the

actual appraised market value of the personal property but directly corresponded to the loan amount; the state proved that the businesses were requiring customers to be released from the loan agreement by paying the principal amount advanced to

them plus a 25 to 27 percent fee, which amounted to an annual percentage rate of 650 to 702 percent. *Clay v. Oxendine*, 285 Ga. App. 50, 645 S.E.2d 553 (2007), cert. denied, 2007 Ga. LEXIS 556 (Ga. 2007).

**7-3-4. Applicability of chapter — Generally; effect on existing lenders.**

**JUDICIAL DECISIONS**

**Cited** in *Clay v. Oxendine*, 285 Ga. App. 50, 645 S.E.2d 553 (2007).

**7-3-6. Exemptions from chapter.**

**JUDICIAL DECISIONS**

**Commissioner’s authority to investigate.** — Trial court properly dismissed a declaratory judgment action brought by a bank and a cash advance lender, which was operating as an agent for the bank, to stop the Georgia Industrial Loan Commissioner from conducting an investigation of their lending activities, because the Commissioner was authorized to conduct an

investigation of the two entities’ loan activities, in spite of the lender’s claim that the bank and the lender were operating under the authority of federal banking law. *BankWest, Inc. v. Oxendine*, 266 Ga. App. 771, 598 S.E.2d 343 (2004).

**Cited** in *Clay v. Oxendine*, 285 Ga. App. 50, 645 S.E.2d 553 (2007).

**7-3-8. License required; application; fees.**

**JUDICIAL DECISIONS**

**Cited** in *Cnty. State Bank v. Strong*, 651 F.3d 1241 (11th Cir. 2011).

**7-3-14. Maximum loan amount, period, and charges.**

**JUDICIAL DECISIONS**

**ANALYSIS**

**GENERAL CONSIDERATION  
INTEREST**

**General Consideration**

**Summary judgment properly denied.** — In a class action suit seeking to hold a lender liable for payday loans, the trial court did not err in concluding that genuine issues of material fact existed as to whether the lender was the true lender

of the loans made after May 14, 2004, because evidence was presented sufficient to create a genuine issue of material fact regarding whether the lender actually received only a 49 percent economic interest for the lender’s services and even if the lender did so, whether the lender nevertheless, by contrivance, device, or scheme,

attempted to avoid the provisions of O.C.G.A. § 16-17-2(a). *Ga. Cash Am. v. Greene*, 318 Ga. App. 355, 734 S.E.2d 67 (2012).

**Cited** in *Cnty. State Bank v. Strong*, 651 F.3d 1241 (11th Cir. 2011).

### **Interest**

**Sale/leaseback transactions deemed illegal payday loans.** — Sale/leaseback transactions engaged in by consumer cash advance businesses violated the anti-payday lending statute, O.C.G.A. § 16-17-1 et seq., and the Georgia Indus-

trial Loan Act, O.C.G.A. § 7-3-1 et seq., since the state proved that the purported lease back of personal property to the consumer was not based on the actual appraised market value of the personal property but directly corresponded to the loan amount; the state proved that the businesses were requiring customers to be released from the loan agreement by paying the principal amount advanced to them plus a 25 to 27 percent fee, which amounted to an annual percentage rate of 650 to 702 percent. *Clay v. Oxendine*, 285 Ga. App. 50, 645 S.E.2d 553 (2007), cert. denied, 2007 Ga. LEXIS 556 (Ga. 2007).

## **7-3-22. Examinations, investigations, and hearings.**

### **JUDICIAL DECISIONS**

**Commissioner's authority to investigate.** — Trial court properly dismissed a declaratory judgment action brought by a bank and a cash advance lender, which was operating as an agent for the bank, to stop the Georgia Industrial Loan Commissioner from conducting an investigation of their lending activities, because the Com-

missioner was authorized to conduct an investigation of the two entities' loan activities, in spite of the lender's claim that the bank and the lender were operating under the authority of federal banking law. *BankWest, Inc. v. Oxendine*, 266 Ga. App. 771, 598 S.E.2d 343 (2004).

## **7-3-23. Cease and desist orders; enjoining violations.**

### **JUDICIAL DECISIONS**

**Cited** in *Clay v. Oxendine*, 285 Ga. App. 50, 645 S.E.2d 553 (2007).

## **7-3-29. Criminal penalties; void loans; civil penalty to borrower for violation; violation not subject of class action; defense of good faith; limitation on remedies for voidness.**

**Law reviews.** — For article on 2004 amendment of this Code section, see 21 *Ga. St. U.L. Rev.* 59 (2004).



CHAPTER 4

INTEREST AND USURY

Article 1		Sec.	
In General		7-4-12.1.	Interest on arrearage on child support.
Sec.		7-4-18.	Criminal penalty for excessive interest.
7-4-2.	Legal rate of interest; maximum rate of interest generally; certain items not considered interest.		

**Cross references.** — Interest rate management agreements, T. 36, C. 82, A. 11.

RESEARCH REFERENCES

**Am. Jur. Proof of Facts.** — Class Truth-In-Lending Act and Regulation Z, Action for Failure to Disclose under the 76 POF3d 193.

ARTICLE 1

IN GENERAL

7-4-1. “Usury” defined.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION  
APPLICATION

General Consideration

**Usury laws did not apply to an investment contract.** — Trial court properly granted summary judgment to a purchaser in a breach of contract suit against a developer as the award the purchaser obtained, which included interest, was not usurious under O.C.G.A. § 7-4-1 as the developer failed to show that the contract involved was a loan to which the usury laws applied as the record established it as an investment contract. *Golden Atlanta Site Dev., Inc. v. Tilton*, 299 Ga. App. 646, 683 S.E.2d 166 (2009).

Application

**Lender’s 49 percent economic interest.** — In a class action suit seeking to hold a lender liable for payday loans, the trial court did not err in concluding that genuine issues of material fact existed as to whether the lender was the true lender of the loans made after May 14, 2004, because evidence was presented sufficient to create a genuine issue of material fact regarding whether the lender actually received only a 49 percent economic interest for the lender’s services and even if the lender did so, whether the lender never-

theless, by contrivance, device, or scheme, Greene, 318 Ga. App. 355, 734 S.E.2d 67 attempted to avoid the provisions of (2012).  
O.C.G.A. § 16-17-2(a). Ga. Cash Am. v.

### RESEARCH REFERENCES

**Am. Jur. Pleading and Practice Forms.** — 14C Am. Jur. Pleading and Practice Forms, Interest and Usury, § 2. **Am. Jur. Proof of Facts.** — Proof of Violation of State Usury Consumer Loan Law, 75 POF3d 103.

### 7-4-2. Legal rate of interest; maximum rate of interest generally; certain items not considered interest.

(a)(1)(A) The legal rate of interest shall be 7 percent per annum simple interest where the rate percent is not established by written contract. Notwithstanding the provisions of other laws to the contrary, except Code Section 7-4-18, the parties may establish by written contract any rate of interest, expressed in simple interest terms as of the date of the evidence of the indebtedness, and charges and any manner of repayment, prepayment, or, subject to the provisions of paragraph (1) of subsection (b) of this Code section, acceleration, where the principal amount involved is more than \$3,000.00 but less than \$250,000.00 or where the lender or creditor has committed to lend, advance, or forbear with respect to any loan, advance, or forbearance to enforce the collection of more than \$3,000.00 but less than \$250,000.00.

(B) Where the principal amount is \$250,000.00 or more, or the lender or creditor has committed to lend, advance, or forbear with respect to any loan, advance, or forbearance to enforce the collection of \$250,000.00 or more, the parties may establish by written contract any rate of interest, expressed in simple interest terms or otherwise, and charges to be paid by the borrower or debtor.

(C) Nothing contained in this subsection shall be construed to prohibit the computation and collection of interest at a variable rate or on a negative amortization basis or on an equity participation basis or on an appreciation basis.

(2) Where the principal amount involved is \$3,000.00 or less, such rate shall not exceed 16 percent per annum simple interest on any loan, advance, or forbearance to enforce the collection of any sum of money unless the loan, advance, or forbearance to enforce the collection of any sum of money is made pursuant to another law.

(3) As used in this Code section, the term “interest” means a charge for the use of money computed over the term of the contract at the rate stated in the contract or precomputed at a stated rate on the scheduled principal balance or computed in any other way or any

other form. Principal includes such charges to which the parties may agree under paragraph (1) of this subsection. Amounts paid or contracted to be paid as either an origination fee or discount points, or both, on any loan secured by an interest in real estate shall not be considered interest and shall not be taken into consideration in the calculation of interest and shall not be subject to rebate as provided in paragraph (1) of subsection (b) of this Code section.

(b)(1) Upon acceleration of the maturity of any loan, advance of money, or forbearance to enforce the collection of any sum of money upon which interest has been precomputed, unearned interest shall be rebated to the debtor in such amount as would result in the rate of interest earned being no greater than the rate of interest established by the original contract. In the case of a loan in which the principal and the interest for the entire term of the loan are included in the face amount of the loan and the loan is to be paid back in weekly, monthly, quarterly, semiannual, or yearly installments, with the interest and principal portions of each installment determined under the pro rata method, any such rebate shall be determined on the pro rata method.

(2) Unless stipulated in the contract, there shall be no prepayment penalty.

(c) Nothing contained in this Code section shall be construed to amend or modify the provisions of Chapter 3 of this title, the “Georgia Industrial Loan Act,” Article 1 of Chapter 1 of Title 10, the “Retail Installment and Home Solicitation Sales Act,” Chapter 5 of this title, “The Credit Card and Credit Card Bank Act,” Chapter 22 of Title 33, the “Insurance Premium Finance Company Act,” Part 5 of Article 3 of Chapter 12 of Title 44, relating to pawnbrokers, and, except as provided in Code Section 7-4-3, Article 2 of Chapter 1 of Title 10, the “Motor Vehicle Sales Finance Act.”

(d) Notwithstanding the foregoing, fees and other charges agreed upon by a financial institution and depositor, as defined in Code Section 7-1-4, in a written agreement governing a deposit, share, or other account, including, but not limited to, overdraft and nonsufficient funds, delinquency or default charges, returned payment charges, stop payment charges, or automated teller machine charges, shall not be considered interest. (Laws 1822, Cobb’s 1851 Digest, p. 393; Laws 1845, Cobb’s 1851 Digest, p. 393; Code 1863, § 2022; Code 1868, § 2023; Ga. L. 1873, p. 52, §§ 2-4; Code 1873, § 2050; Ga. L. 1878-79, p. 184, § 3; Code 1882, §§ 2050, 2057a; Civil Code 1895, §§ 2876, 2886; Civil Code 1910, §§ 3426, 3436; Code 1933, § 57-101; Ga. L. 1975, p. 370, § 1; Ga. L. 1979, p. 355, § 1; Ga. L. 1983, p. 1146, § 1; Ga. L. 1984, p. 22, § 7; Ga. L. 1987, p. 268, § 2; Ga. L. 1988, p. 534, § 1; Ga. L. 1997, p. 143, § 7; Ga. L. 2014, p. 213, § 1/HB 824.)



**The 2014 amendment**, effective April 15, 2014, added subsection (d).

**Editor's notes.** — Ga. L. 2014, p. 213, § 3/HB 824, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect

the law applicable to litigation pending as of February 19, 2014."

**Law reviews.** — For annual survey on construction law, see 65 Mercer L. Rev. 67 (2013).

## JUDICIAL DECISIONS

### ANALYSIS

GENERAL CONSIDERATION  
INTEREST AND OTHER CHARGES  
USURY

#### 1. IN GENERAL

### General Consideration

**State law applied.** — In a suit seeking to confirm an arbitration award, a corporation was entitled to an award of interest in accordance with O.C.G.A. § 7-4-2(a)(1)(A) on any unpaid portion of the arbitration award for the period between when the award was made and when the court entered final judgment confirming the award; state law, rather than federal law, applied because the court's jurisdiction was based on diversity. *Bryant Motors, Inc. v. Blue Bird Body Co.*, No. 5:06-CV-353 (CAR), 2007 U.S. Dist. LEXIS 61700 (M.D. Ga. Aug. 22, 2007).

**Comparison with federal rate.** — At the relevant times asserted in an adversary proceeding asserted by a Chapter 7 trustee, the legal rate of interest under 28 U.S.C. § 1961 was less than the Georgia legal rate of interest of 7 percent. *Silliman v. Benson* (In re Metro Builders Supply, Inc.), No. 06-66726, 2007 Bankr. LEXIS 3717 (Bankr. N.D. Ga. Oct. 4, 2007).

**Section inapplicable to lost wages awards.** — Director was properly awarded 12 percent interest on a lost wages award as lost wages were not open accounts under O.C.G.A. § 7-4-2. *Gallagher v. McKinnon*, 273 Ga. App. 727, 615 S.E.2d 746 (2005).

**Cited in** *In the Matter of Babson*, 283 Ga. 382, 659 S.E.2d 384 (2008).

### Interest and Other Charges

#### Prejudgment interest.

In an action in which the lenders demanded payment of a loan to the debtor before the date of trial, and after a date

set by the debtor that the debtor would repay the loan, the lenders were entitled to prejudgment interest up and until the day of trial on the unpaid loan balance at the legal rate of interest. *Gray v. King*, 270 Ga. App. 855, 608 S.E.2d 320 (2004).

Trial court erred when it imposed a fixed rate of interest on a judgment obtained by a class of retirees in their action against the Teachers Retirement System of Georgia, arising from their claims that the retirees were not paid the appropriate amounts for their retirement benefits, as there was no pre- or post-judgment interest rate established by the written contract between the parties that governed those payments, such that the statutory rates of seven percent and prime plus three percent should have been applied pursuant to O.C.G.A. §§ 7-4-2(a)(1)(A) and 7-4-12(a); another interest rate that was set by the System in a regulation was not applicable to the instant matter. *Teachers Ret. Sys. v. Plymel*, 296 Ga. App. 839, 676 S.E.2d 234 (2009).

Because the defendant's damages on the defendant's suit on account counterclaim were fixed, certain, and ascertainable making the damages liquidated (plaintiff conceded that the plaintiff received and never paid for \$1,017,551 worth of GPS units from the defendant), the district court erred in failing to award the defendant pre-judgment interest at the legal rate established by O.C.G.A. § 7-4-2. *Discrete Wireless, Inc. v. Coleman Techs., Inc.*, No. 10-12495, 2011 U.S. App. LEXIS 7043 (11th Cir. Apr. 5, 2011) (Unpublished).

In breach-of-contract actions in all cases

when an amount ascertained would be the damages at the time of the breach, it may be increased by the addition of legal interest from that time until the recovery. *Goody Prods. v. Dev. Auth. of Manchester*, 320 Ga. App. 530, 740 S.E.2d 261 (2013).

**Prejudgment interest on damages exceeded recovery amount authorized by evidence.** — Pursuant to instructions from trial court, while jury was authorized under O.C.G.A. § 13-6-13 to increase the \$24,698.39 in breach of contract damages by adding prejudgment legal interest to damages at the rate of seven percent per annum simple interest from the date of the breach, jury's general verdict on the breach of contract claim in amount of \$42,690.05 was in excess of any recovery authorized by the evidence; as a result, judgment entered on the verdict had to be reversed and the case remanded for new trial. *Chacon v. Holcombe*, 290 Ga. App. 767, 660 S.E.2d 851 (2008).

**No writing necessary for interest when admission by debtor.** — Trial court did not err in awarding a creditor a money judgment, plus interest, because the interest owed was established by the debtor's own admission on the stand; in a case where the interest owed is established by a party's own admission on the stand, no writing is necessary. *Allen v. Santana*, 303 Ga. App. 844, 695 S.E.2d 314 (2010).

**Interest rate not in excess of maximum.** — Trial court did not err by rejecting a debtor's argument that a lender's temporary acceptance of lowered payments without waiving full payment transformed the loan into a usurious transaction because the interest rate of the loan was not in excess of the maximum applicable legal rate of 5 percent per month under O.C.G.A. § 7-4-18(a).

*Latimore v. Vatacs Group, Inc.*, 317 Ga. App. 98, 729 S.E.2d 525 (2012).

## Usury

### 1. In General

**Lender's 49 percent economic interest.** — In a class action suit seeking to hold a lender liable for payday loans, the trial court did not err in concluding that genuine issues of material fact existed as to whether the lender was the true lender of the loans made after May 14, 2004, because evidence was presented sufficient to create a genuine issue of material fact regarding whether the lender actually received only a 49 percent economic interest for the lender's services and even if the lender did so, whether the lender nevertheless, by contrivance, device, or scheme, attempted to avoid the provisions of O.C.G.A. § 16-17-2(a). *Ga. Cash Am. v. Greene*, 318 Ga. App. 355, 734 S.E.2d 67 (2012).

**Lender cannot unilaterally purge transaction of taint.**

Under the look-through rule, a hypothetical coercive claim was the basis for federal jurisdiction over petitioner bank's Federal Arbitration Act petition, but petitioner payday loan companies' arbitration petition was precluded by a related underlying state court judgment holding the companies in contempt and, striking the companies' arbitration defenses under O.C.G.A. § 9-11-37(b)(2) to respondent borrower's suit alleging violations of Georgia's usury statute, O.C.G.A. § 7-4-1 et seq.; Georgia's Industrial Loan Act, O.C.G.A. § 7-3-1 et seq.; and Georgia's Racketeer Influenced and Corrupt Organizations statute, O.C.G.A. § 16-14-1 et seq. *Cnty. State Bank v. Strong*, 651 F.3d 1241 (11th Cir. 2011), cert. denied,

U.S. , 133 S. Ct. 101, 184 L. Ed. 2d 22 (2012).

## OPINIONS OF THE ATTORNEY GENERAL

**Loan or origination fee.** — If a loan or origination fee charged in connection with a non-real estate loan under \$3,000 is not adduced based on the time value of money, if its use merely increases the lender's expectation of collecting in full the principal amount of the loan plus

interest or if the fee is attributable to a service or benefit other than the extension of credit, and if the fee's factual justification is clearly documented in sufficient detail, such a fee should not be considered prepaid interest. 2003 Op. Att'y Gen. No. 2003-8.



**Overdraft fees.** — An overdraft fee will not be considered interest when the transaction is readily characterized as a checking account transaction, lacking the legal and economic reality of a loan or

extension of credit, and when the fee is not determined based on the amount and time value of overdraft amounts. 2003 Op. Att’y Gen. No. 2003-9.

## 7-4-12. Interest on judgments.

**Law reviews.** — For annual survey of trial practice and procedure, see 56 Mercer L. Rev. 433 (2004).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 28 (2003).

## JUDICIAL DECISIONS

**Interest on confirmed arbitration award.** — Trial court properly awarded postjudgment interest after the court confirmed an arbitration award; once confirmed, the arbitration was treated like all other judgments, and under O.C.G.A. § 7-4-12(a), all judgments bore annual interest on the principal amount recovered. *Airtab, Inc. v. Limbach Co., LLC*, 295 Ga. App. 720, 673 S.E.2d 69 (2009).

**Judgment for sum certain required.**

Trial court did not err in denying a request for post-judgment interest since no judgment for a sum certain was entered. *McClure v. Raper*, 277 Ga. 642, 594 S.E.2d 330 (2004).

**Rate of interest.**

Director was properly awarded 12 percent interest on a lost wages award as lost wages were not open accounts under O.C.G.A. § 7-4-2. *Gallagher v. McKinnon*, 273 Ga. App. 727, 615 S.E.2d 746 (2005).

Trial court properly ordered that a judgment in favor of the plaintiffs in a personal injury action would bear post-judgment interest at a rate of 12 percent, because the version of O.C.G.A. § 7-4-12 which was in effect at the time of the filing of the action allowed that rate of interest. *Ford Motor Co. v. Sasser*, 274 Ga. App. 459, 618 S.E.2d 47 (2005).

Shareholder’s award of lost wages was not an open account; 12 percent interest was properly added to the award under O.C.G.A. § 7-4-12, as it existed at the time of the judgment. *Gallagher v. McKinnon*, 273 Ga. App. 727, 615 S.E.2d 746 (2005).

In a suit in which an insured contended

that an insurer acted with negligence or in bad faith in failing to honor an accident victim’s time-sensitive demand for settlement in the amount of the policy limits, the insured was not precluded from seeking post-judgment interest, at a rate of 12% per annum, under O.C.G.A. § 7-4-12 upon a judgment that was rendered in 2004 in favor of the victim and against the insured simply because the insurer later tendered the policy limits. *Hulsey v. Travelers Indem. Co. of Am.*, 460 F. Supp. 2d 1332 (N.D. Ga. 2006).

Trial court erred when it imposed a fixed rate of interest on a judgment obtained by a class of retirees in their action against the Teachers Retirement System of Georgia, arising from their claims that they were not paid the appropriate amounts for their retirement benefits, as there was no pre- or post-judgment interest rate established by the written contract between the parties that governed those payments, such that the statutory rates of seven percent and prime plus three percent should have been applied pursuant to O.C.G.A. §§ 7-4-2(a)(1)(A) and 7-4-12(a); another interest rate that was set by the System in a regulation was not applicable to the instant matter. *Teachers Ret. Sys. v. Plymel*, 296 Ga. App. 839, 676 S.E.2d 234 (2009).

Husband’s concern about the interest rate of 11.25 percent imposed on an award of attorneys fees was justified under circumstances in which the husband asserted that the date of the judgment was October 1, 2007, and the applicable prime rate was 7.75 percent, while the wife argued that the applicable prime rate was



8.25 percent, the rate on July 20, 2007, the day the trial court orally pronounced the court's judgment; however, an oral pronouncement was not a judgment. It had to have been reduced to writing and entered as a judgment to have been effective. *Mongerson v. Mongerson*, 285 Ga. 554, 678 S.E.2d 891 (2009), overruled on other grounds, 288 Ga. 670, 706 S.E.2d 456 (2011).

**Post-judgment interest under O.C.G.A. § 13-6-11.** — Trial court properly excluded an award of pre-judgment interest in calculating the amount of post-judgment interest and properly applied post-judgment interest to the award of attorney fees under O.C.G.A. § 13-6-11. *Davis v. Whitford Props.*, 282 Ga. App. 143, 637 S.E.2d 849 (2006).

**Filing of garnishment proceedings, etc.**

When a claim for principal judgment debt interest arises in a later-filed garnishment action, it is more akin to a request for prejudgment interest because the judgment creditor seeks to recover interest running from before the trial court enters judgment in the garnishment action and, in fact, from before the garnishment action was even commenced. *St. Paul Reinsurance Co. v. Ross*, 276 Ga. App. 135, 622 S.E.2d 374 (2005).

**Effect of party's dilatory practices.** — Plaintiff, a long-term disability benefits claimant, sought pre-judgment interest under O.C.G.A. § 7-4-12 on a benefits award against defendant plan adminis-

trator; however, denial of interest was not an abuse of discretion since the amount of interest sought was greater than claimant's award of benefits and claimant bore some fault for the extended period of time required to litigate the case due to claimant's several amended complaints, requests to extend discovery times and other deadlines, and motion to disqualify the judge. *Byars v. Coca-Cola Co.*, 517 F.3d 1256 (11th Cir. 2008).

**Interest award reversed.** — Award of interest for a client against an attorney from the date that the client satisfied an underlying judgment against the client, the client's son, and the attorney had no legal basis and was reversed; it had been established that the client, his son, and the attorney were joint tortfeasors and while O.C.G.A. § 10-7-51 authorized the award of interest running from the date of a co-surety's payment of a joint obligation, it applied to contribution actions arising from joint instruments executed by the sureties, not to joint tortfeasors. The issue was not controlled by O.C.G.A. § 9-13-78 as it provided a method of enforcing contribution from a joint defendant and it did not purport to control an award of interest; O.C.G.A. § 7-4-12 provided that all money judgments bore post-judgment interest from the date of entry. *Gerschick v. Pounds*, 281 Ga. App. 531, 636 S.E.2d 663 (2006), cert. denied, 2007 Ga. LEXIS 95 (Ga. 2007).

**Cited in** *Schoenbaum Ltd. Co., LLC v. Lenox Pines, LLC*, 262 Ga. App. 457, 585 S.E.2d 643 (2003).

### 7-4-12.1. Interest on arrearage on child support.

(a) All awards of child support expressed in monetary amounts shall accrue interest at the rate of 7 percent per annum commencing 30 days from the day such award or payment is due. This Code section shall apply to all awards, court orders, decrees, and judgments rendered pursuant to Title 19. It shall not be necessary for the party to whom the child support is due to reduce any such award to judgment in order to recover such interest. The court shall have discretion in applying or waiving past due interest. In determining whether to apply, waive, or reduce the amount of interest owed, the court shall consider whether:

(1) Good cause existed for the nonpayment of the child support;

(2) Payment of the interest would result in substantial and unreasonable hardship for the parent owing the interest;

(3) Applying, waiving, or reducing the interest would enhance or detract from the parent's current ability to pay child support, including the consideration of the regularity of payments made for current child support of those dependents for whom support is owed; and

(4) The waiver or reduction of interest would result in substantial and unreasonable hardship to the parent to whom interest is owed.

(b) This Code section shall not be construed to abrogate the authority of a IV-D agency to waive, reduce, or negotiate a settlement of unreimbursed public assistance in accordance with subsection (b) of Code Section 19-11-5. (Code 1981, § 7-4-12.1, enacted by Ga. L. 1996, p. 649, § 1; Ga. L. 2005, p. 224, § 3/HB 221; Ga. L. 2006, p. 583, § 2/SB 382; Ga. L. 2010, p. 878, § 7/HB 1387.)

**The 2005 amendment**, effective July 1, 2006, substituted "7 percent" for "12 percent" in the first sentence and added the last sentence.

**The 2006 amendment**, effective April 28, 2006, delayed the effective date of the 2005 amendment until January 1, 2007, and also, effective January 1, 2007, designated the previously existing provisions as subsection (a); in subsection (a), added "In determining whether to apply, waive, or reduce the amount of interest owed, the Court shall consider whether:" at the end of the introductory paragraph and added paragraphs (a)(1) through (a)(4); and added subsection (b).

**The 2010 amendment**, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, revised capitalization in the introductory language of subsection (a).

**Editor's notes.** — Ga. L. 2005, p. 224, § 1, not codified by the General Assembly, provides that: "The General Assembly finds and declares that it is important to assess periodically child support guidelines and determine whether existing guidelines continue to be viable and effective or whether they have failed or ceased to accomplish their original policy objectives. The General Assembly further finds that supporting Georgia's children is vitally important to the citizens of Georgia. Therefore, the General Assembly has determined that it is in the best interests of the state and its citizenry to undertake an evaluation of the child support guidelines on a continuing basis. The General As-

sembly declares that it is important that all of Georgia's children are provided with adequate financial support whether the children's parents are living together or not living together. The General Assembly finds that both parents have a continuing obligation with respect to providing financial and emotional stability for their child or children. It is the hope of the members of the General Assembly that all parents work together to advance the best interest of their children."

Ga. L. 2006, p. 583, § 8, not codified by the General Assembly, amended Ga. L. 2005, p. 224, § 13, so as to delay the effective date of the 2005 amendment to this Code section until January 1, 2007.

Ga. L. 2006, p. 583, § 9, not codified by the General Assembly, provided that it was the intention of the 2006 Act to delay for six months the effectiveness of the provisions of 2005 Act No. 52 (Ga. L. 2005, p. 224) of the General Assembly, excepting only those provisions of 2005 Act No. 52 (Ga. L. 2005, p. 224) creating the Georgia Child Support Commission which went into effect upon approval of that Act by the Governor.

Ga. L. 2006, p. 583, § 10(b), not codified by the General Assembly, provides: "Sections 1 through 7 of this Act shall become effective on January 1, 2007, and shall apply to all pending civil actions on or after January 1, 2007."

**Law reviews.** — For annual survey of domestic relations law, see 56 Mercer L. Rev. 221 (2004). For article on 2005 amendment of this Code section, see 22

Ga. St. U.L. Rev. 73 (2005). For article on 2006 amendment of this Code section, see 23 Ga. St. U.L. Rev. 103 (2006).

## JUDICIAL DECISIONS

**Res judicata.** — Because the issue of interest on past due child support was not put in issue and decided in a prior contempt proceeding related to a father's failure to pay child support, *res judicata* did not bar a subsequent judgment for interest on the past due child support amounts; it is undisputed that O.C.G.A. § 7-4-12.1 applies retroactively. *Dial v. Adkins*, 265 Ga. App. 650, 595 S.E.2d 332 (2004).

**No enforceable contract to collect post-judgment interest on unpaid child support.** — A trial court's grant of summary judgment in favor of the Georgia Department of Human Resources, Office of Child Support enforcement, was upheld on appeal in a class action suit brought by a recipient challenging the department's failure to collect post-judgment interest on unpaid child support since a statement of understanding, though stating it was a contract, afforded complete discretion to the department in rendering services and used the

vague term appropriate services, which rendered the purported agreement too vague and uncertain to be enforced as a contract. *Kennedy v. Ga. Dep't of Human Res. Child Support Enforcement*, 286 Ga. App. 222, 648 S.E.2d 727 (2007).

### **Retroactive application.**

The amended version of O.C.G.A. § 7-4-12.1 applies to all civil actions that were filed when the former version of the statute was effective but were still pending on or after January 1, 2007; the amended version of § 7-4-12.1 makes changes related to interest on child support arrearage that are remedial rather than substantive, and therefore retroactive application does not impair vested substantive rights. *Gowins v. Gary*, 284 Ga. App. 370, 643 S.E.2d 836 (2007), *rev'd* on other grounds, 283 Ga. 433, 658 S.E.2d 575 (2008).

**Cited in** *Mullin v. Roy*, 287 Ga. 810, 700 S.E.2d 370 (2010).

## **7-4-13. Law of place of contract governs interest unless otherwise provided.**

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

#### **General Consideration**

#### **Law of place of performance governs interest.**

Parties to a private contract who admittedly made loans to Georgia residents

could not, by virtue of a choice of law provision, exempt themselves from investigation for potential violations of Georgia's usury laws. *BankWest, Inc. v. Oxendine*, 266 Ga. App. 771, 598 S.E.2d 343 (2004).

## **7-4-14. Interest runs from default unless otherwise agreed; when demand necessary.**

**Law reviews.** — For survey article on trial practice and procedure, see 60 *Merger L. Rev.* 397 (2008).



# JUDICIAL DECISIONS

## ANALYSIS

GENERAL CONSIDERATION  
OBLIGATIONS PAYABLE ON DEMAND

### General Consideration

**Cited in** SunTrust Bank v. Hightower, 291 Ga. App. 62, 660 S.E.2d 745 (2008).

### Obligations Payable On Demand

**No prejudgment interest absent demand for return of purchase money.**  
— In determining that a tax sale was void,

the superior court properly held that a buyer of real property was entitled to a refund of the purchase price it paid for the property, but it could not recover prejudgment interest, as it failed to make an unequivocal demand for the return of its purchase money. Harpagon Co. v. Freeman, 281 Ga. 531, 640 S.E.2d 268 (2007).

## 7-4-15. When interest runs on liquidated demands; promissory notes payable on demand.

# JUDICIAL DECISIONS

## ANALYSIS

GENERAL CONSIDERATION  
LIQUIDATED DEMANDS  
INSURANCE  
WHEN INTEREST IS RECOVERABLE

### General Consideration

#### Prejudgment interest.

Jury's award of prejudgment interest in the amount of \$36,143 on a principal balance of \$134,335 on a credit account for the sale of cattle feed products was proper and was affirmed. Dixon Dairy Farms, Inc. v. Purina Mills, Inc., 267 Ga. App. 738, 601 S.E.2d 152 (2004).

In determining the prejudgment interest to be added to a testamentary gift, the operative statute in a probate case is the more specific statute, O.C.G.A. § 53-4-61, rather than the more general one, O.C.G.A. § 7-4-15. In re Estate of Barr, 278 Ga. App. 837, 630 S.E.2d 135 (2006).

Because a stockholder failed to comply with O.C.G.A. § 51-12-14, and prejudgment interest was not authorized by O.C.G.A. § 7-4-15, these awards entered in favor of the stockholder were reversed. Monterrey Mexican Rest. of Wise, Inc. v. Leon, 282 Ga. App. 439, 638 S.E.2d 879 (2006).

Since a former employee was entitled to liquidated damages pursuant to the terms of an employment contract due to the

employee's former employer's reduction of the employee's base salary, the employee was also entitled to prejudgment interest on the liquidated damages. McBride v. Mkt. St. Mortg., No. 07-8044, 2010 U.S. App. LEXIS 11191 (10th Cir. June 2, 2010) (Unpublished).

Because defendant's damages on the defendant's suit on account counterclaim were fixed, certain, and ascertainable making the damages liquidated (plaintiff conceded that the plaintiff received and never paid for \$1,017,551 worth of GPS units from the defendant), the district court erred in failing to award the defendant pre-judgment interest at the legal rate established by O.C.G.A. § 7-4-2. Discrete Wireless, Inc. v. Coleman Techs., Inc., No. 10-12495, 2011 U.S. App. LEXIS 7043 (11th Cir. Apr. 5, 2011) (Unpublished).

Trial court erred in denying a widow's motion for summary judgment on the widow's claim for prejudgment interest because the widow was entitled to collect credit life insurance proceeds since an insurer was precluded from denying or

rescinding insurance coverage; the only issue contested by the insurer was the existence of coverage, not the amount of the widow's claim and, thus, the widow's claim to the insurance proceeds was liquidated. *Flynt v. Life of the South Ins. Co.*, 312 Ga. App. 430, 718 S.E.2d 343 (2011), cert. denied, 2012 Ga. LEXIS 305 (Ga. 2012).

Trial court properly awarded a creditor prejudgment interest under O.C.G.A. § 7-4-15 after the creditor, having been awarded partial summary judgment on the creditor's claim for money had and received, amended the creditor's complaint to seek prejudgment interest. The debtors were given an opportunity to contest the award of interest. *Crisler v. Haugabook*, 290 Ga. 863, 725 S.E.2d 318 (2012).

### Liquidated Demands

#### Prejudgment interest.

Because there was no dispute about the specific amount that a realty firm was entitled to receive from its owner if it earned the full commission set forth in the operative contracts, that amount was liquidated, and the fact that the owner offered to pay only one-half of that amount did not render the realty firm's claim unliquidated; hence, the realty firm was entitled to prejudgment interest on the unpaid commission from the date of closing. *Tommy McBride Realty v. Nicholson*, 286 Ga. App. 135, 648 S.E.2d 468 (2007).

Trial court erred when the court concluded upon default that only liquidated damages were involved and awarded a manufacturer damages without an evidentiary hearing in the manufacturer's breach of contract action against a distributor because the complaint did not contain sufficient information to allow the trial court to ascertain the amount owed under the contract and that the amount was fixed and certain; the trial court could not properly award damages and pre-judgment interest under O.C.G.A. § 7-4-15 to the manufacturer without an evidentiary hearing because the manufacturer's complaint did not show that the manufacturer's claims were for liquidated damages. *Kitchen Int'l, Inc. v. Evans Cab-*

*inet Corp.*, 310 Ga. App. 648, 714 S.E.2d 139 (2011).

### Insurance

**Prejudgment interest but not punitive damages or attorney fees were warranted on liquidated claim.** — Where an insurance company was awarded damages for fraudulent claims submitted by the owner of an insured in the amount of the fraudulent claims on which the company paid, the company was entitled to prejudgment interest on the award of damages pursuant to O.C.G.A. § 7-4-15 because the award was fixed and certain, but was not entitled to interest on its claims for punitive damages and attorney fees because such claims were unliquidated. *Cincinnati Ins. Co. v. Porter (In re Porter)*, No. 05-44583-PWB, 2007 Bankr. LEXIS 2185 (Bankr. N.D. Ga. May 23, 2007).

**Prejudgment interest warranted on liquidated claim for total loss with no dispute as to value.** — Damages for cargo stolen from an insured's truck were liquidated under O.C.G.A. § 7-4-15 because the insured presented the invoice price of the stolen cargo at trial, and it was undisputed that the total cargo was lost; the insurer did not contest the amount of the invoices or present an alternate calculation of the amount. The insurer was therefore liable for prejudgment interest on the liquidated amount. *Certain Underwriters at Lloyds, London v. DTI Logistics, Inc.*, 300 Ga. App. 715, 686 S.E.2d 333 (2009).

### When Interest Is Recoverable

#### Prejudgment interest, etc.

When a guardian disputed whether the guardian was owed commissions for stocks and bonds under former O.C.G.A. § 29-2-42(a) (now O.C.G.A. § 29-5-50), not the amount paid for such commissions, the estate's administrator was entitled to prejudgment interest under O.C.G.A. § 7-4-15; the fact that the guardian disputed liability at trial did not convert the claim into a claim for an uncertain and, therefore, unliquidated amount. *In re Estate of Miraglia*, 290 Ga. App. 28, 658 S.E.2d 777 (2008).

**Suit by attorney to recover fee.** — In breach of contract action brought by attorney to recover legal fees from a client, attorney was entitled to prejudgment interest on one-third of the cash settlement as of the date client received a settlement check; contract was clear that attorney

was entitled to the cash settlement, and when client received the settlement check, attorney's one-third share of the cash payment was liquidated and due. *Hardnett v. Ogundele*, 291 Ga. App. 241, 661 S.E.2d 627 (2008).

## 7-4-16. When interest runs on commercial accounts; maximum interest rate on commercial accounts.

**Law reviews.** — For annual survey on construction law, see 65 Mercer L. Rev. 67 (2013).

### JUDICIAL DECISIONS

#### **Applicability.**

In the action involving the City of Griffin and the Commissioners of the Board of Commissioners of Spalding County in which an unlawful tax was alleged, the trial court improperly assessed prejudgment interest under O.C.G.A. § 7-4-16 because that statute applied only to commercial accounts. *McDaniel v. City of Griffin*, 281 Ga. App. 350, 636 S.E.2d 62 (2006).

Heating system installer's invoices did not specify terms per O.C.G.A. § 7-4-16, as the invoice did not define the interest sought as that applicable to commercial accounts, and did not list a specific rate of interest, the trial court erred when the court granted prejudgment interest at the rate allowed thereunder. *Carrier Corp. v. Rollins, Inc.*, 316 Ga. App. 630, 730 S.E.2d 103 (2012).

**Commercial account due and payable.** — Summary judgment was properly granted to a buyer as: (1) a seller's claim was time-barred under O.C.G.A. § 11-2-725 since a document dated May 5, 2000, was not an invoice to the buyer, but was a compilation of invoices previously submitted to the buyer; (2) even if the seller provided the buyer with services in conjunction with the goods it sold, O.C.G.A. § 11-2-725 applied as the predominant element of the agreement was the sale of goods; (3) under O.C.G.A. § 7-4-16, a commercial account became due and payable upon the date a statement of the account was rendered to the

obligor; and (4) the seller's claim that the six-year limitation period contained in O.C.G.A. § 9-3-24 applied was rejected as there was no contract and the claim was not raised before the trial court. *All Tech Co. v. Laimer Unicon, LLC*, 281 Ga. App. 579, 636 S.E.2d 753 (2006).

In a case brought under the Perishable Agricultural Commodities Act, 1930 (PACA), 7 U.S.C. §§ 499(a)-499(o), in which: (1) a produce company's president had defalcated within the meaning of the law on her trust duties; (2) the president was personally liable to a produce wholesaler in the amount of the company's PACA trust for her failures as trustee; (3) the wholesaler's invoices provided for interest on unpaid accounts at the rate of one and one-half percent per month; and (4) the invoices provided that the customer must pay the attorney fees and costs incurred in the collection of all past due invoices, in its grant of summary judgment in favor of the wholesaler, the district court awarded the wholesaler the principal amount that was owed; in addition, pursuant to O.C.G.A. § 13-1-11, the wholesaler was entitled to attorney fees and under O.C.G.A. § 7-4-16 it was entitled to interest payments at the rate stated on the invoices. *Cee Bee Produce, Inc. v. Tucker*, No. 5:06-CV-181 (WDO), 2007 U.S. Dist. LEXIS 67339 (M.D. Ga. Sept. 12, 2007).

Because account invoices sued upon by two contractors represented obligations for the payment of money arising out of



transactions to furnish labor and materials, none of which involved a retail installment transaction, and involved liquidated claims, the trial court did not err in determining that said accounts were commercial accounts. Thus, an award of prejudgment interest as to the amounts owed was upheld on appeal. *Hampshire Homes, Inc. v. Espinosa Constr. Servs.*, 288 Ga. App. 718, 655 S.E.2d 316 (2007).

Appellate court properly dismissed an attorney's direct appeal in a case wherein the attorney sued a client for attorney fees as the judgment the attorney recovered was one for damages in an amount under \$10,000, and as such, it was subject to appeal as a matter of discretion under O.C.G.A. § 5-6-35(a)(6), rather than of right. The failure of the attorney to recover on the claims of prejudgment interest or attorney fees did not transform the judgment into a finding on liability adverse to the attorney so as to render appeal of the matter outside the ambit of § 5-6-35(a)(6). *Cooney v. Burnham*, 283 Ga. 134, 657 S.E.2d 239 (2008).

Trial court did not err in awarding a seller pre-judgment interest under O.C.G.A. § 7-4-16 in the seller's breach of contract action against a buyer to recover damages for unpaid principal on shipped material and unpurchased material because the seller's invoices were a due and payable liquidated debt on a commercial account subject to interest under § 7-4-16; because certain materials were delivered by the seller and accepted by the buyer, the buyer was responsible for payment according to the agreed-upon price. *Scovill Fasteners, Inc. v. Northern Metals, Inc.*, 303 Ga. App. 246, 692 S.E.2d 840 (2010).

Jury's interest award on a supplier's claim against a guarantor was not arbitrary as the claim was based on a collection of commercial interest that had accrued on a customer's unpaid invoices and the amount of award was within the range of evidence. *Fletcher v. C. W. Matthews Contr. Co.*, 322 Ga. App. 751, 746 S.E.2d 230 (2013).

**Section inapplicable in action for breach of contract.** — Maximum allowable interest on past due licensing fees was \$117,373 as provided in the parties'

licensing agreement. The trial court erred in using the calculation allowed under O.C.G.A. § 7-4-16 because that statute applied in actions for open account, not actions for breach of contract. *Noons v. Holiday Hospitality Franchising, Inc.*, 307 Ga. App. 351, 705 S.E.2d 166 (2010).

**Action between contractor and subcontractor.**

A subcontractor was entitled to recover from an insurer on a payment bond because a pay-when-paid clause in a contract of the contractor and subcontractor could not be used as a defense by the insurer when it denied the subcontractor its federal remedy under the Miller Act. Thus, the subcontractor met the requirements of 40 U.S.C. §§ 3131 and 3133, and was entitled to summary judgment for the amount of the contractor's outstanding debt plus prejudgment interest under O.C.G.A. § 7-4-16. *United States ex rel. McKenney'S, Inc. v. Gov't Tech. Servs., LLC*, 531 F. Supp. 2d 1375 (N.D. Ga. 2008).

**Contractor's claim against owner.**

— Although a jury did not ultimately award the entire amount of a contractor's original claim against an owner, the amount of the unpaid balance as determined by the jury was a due and payable liquidated debt on a commercial account, and therefore subject to prejudgment interest under O.C.G.A. § 7-4-16. The trial court erred in declining to award prejudgment interest under the statute. *Elec. Works CMA, Inc. v. Baldwin Tech. Fabrics, LLC*, 306 Ga. App. 705, 703 S.E.2d 124 (2010).

**Request for prejudgment interest must be specific.**

Defendant was not entitled to pre-judgment interest under O.C.G.A. § 7-4-16 on the defendant's suit on account counterclaim because the defendant did not comply with the requirement that a commercial creditor make a pre-trial invocation of the applicability of that provision (while the standard terms and conditions provided that outstanding amounts would bear 1.5 percent interest, it did not apply to the debts underlying defendant's counterclaim); defendant's pre-trial efforts to seek interest under O.C.G.A. § 7-4-16 did not specify the rate

of interest being sought. *Discrete Wireless, Inc. v. Coleman Techs., Inc.*, No. 10-12495, 2011 U.S. App. LEXIS 7043 (11th Cir. Apr. 5, 2011) (Unpublished).

**Prejudgment interest on invoices.**

Prejudgment interest awarded by a jury in an action on an account should have been stricken by a trial judge because a fixed sum was owed by a purchaser, and the fact that the jury did not award the entire amount sought did not make the damages unliquidated; further, the parties stipulated that interest under O.C.G.A. § 7-4-16 was a matter for the court to decide. *Kroger Co. v. U. S. Foodservice of Atlanta, Inc.*, 270 Ga. App. 525, 607 S.E.2d 177 (2004).

**Claim not barred.** — Trial court erred by granting summary judgment in favor of a debtor on all of the invoices that made up a creditor's claim against the debtor on

the ground that the complaint was barred by the four-year limitation period for a suit on account because the trial court's grant of summary judgment was based on a purported admission by the creditor that its claims accrued on April 3, 2001, but the trial court misread the document, and the creditor submitted authenticated invoices, which showed dates more recent than four years prior to the date suit was filed; unless otherwise provided in the agreement, claims are barred if the claims are asserted more than four years after invoices are submitted to the buyer. *Avery Enters. v. Lyndhurst Builders, LLC*, 304 Ga. App. 353, 696 S.E.2d 389 (2010).

**Cited** in *Schoenbaum Ltd. Co., LLC v. Lenox Pines, LLC*, 262 Ga. App. 457, 585 S.E.2d 643 (2003); *Kitchen Int'l, Inc. v. Evans Cabinet Corp.*, 310 Ga. App. 648, 714 S.E.2d 139 (2011).

## ADVISORY OPINIONS OF THE STATE BAR

**Interest charged by attorneys on overdue bills.** — State Disciplinary Board is of the opinion that an attorney may ethically unilaterally charge interest on client's overdue bills. A lawyer may ethically do so provided that the lawyer complies with all applicable law, specifi-

cally O.C.G.A. § 7-4-16, the Federal Truth in Lending and Fair Credit Billing Acts contained in Title I of the Consumer Credit Protection Act as amended (15 U.S.C. § 1601 et seq.) and EC 2-19. Adv. Op. No. 85-45 (March 15, 1985).

## 7-4-17. Payment applied first to interest; no interest on unpaid interest; exceptions.

## JUDICIAL DECISIONS

**Borrower waived and released its claim under this section.** — Borrower's breach of contract claim against a lender based on a violation of O.C.G.A. § 7-4-17, forbidding the calculation of interest upon interest, was barred because the lender had executed loan modification agreements in which it waived and released any claims it had against the lender. *Heritage Creek Dev. Corp. v. Colonial Bank*, 268 Ga. App. 369, 601 S.E.2d 842 (2004).

**Res judicata.** — Trial court did not err

in granting a lender's motion for summary judgment because the doctrine of res judicata barred a debtor's suit alleging that the lender incorrectly charged interest on the debtor's unsecured revolving line of credit; the same matters were already litigated between the same parties in an action previously adjudicated on the merits by a court of competent jurisdiction. *Rose v. Household Fin. Corp.*, 316 Ga. App. 282, 728 S.E.2d 879 (2012).

## 7-4-18. Criminal penalty for excessive interest.

(a) Any person, company, or corporation who shall reserve, charge, or take for any loan or advance of money, or forbearance to enforce the collection of any sum of money, any rate of interest greater than 5 percent per month, either directly or indirectly, by way of commission for advances, discount, exchange, or the purchase of salary or wages; by notarial or other fees; or by any contract, contrivance, or device whatsoever shall be guilty of a misdemeanor; provided, however, that regularly licensed pawnbrokers, as defined in Code Section 44-12-130, are limited in the amount of interest they may charge only by the limitations set forth in Code Section 44-12-131.

(b) This Code section shall not be construed as repealing or impairing the usury laws now existing but shall be construed as being cumulative thereof.

(c) Nothing contained in Code Section 7-4-2 or 7-4-3 shall be construed to amend or modify the provisions of this Code section.

(d) Notwithstanding the foregoing, fees and other charges agreed upon by a financial institution and depositor, as defined in Code Section 7-1-4, in a written agreement governing a deposit, share, or other account, including, but not limited to, overdraft and nonsufficient funds, delinquency or default charges, returned payment charges, stop payment charges, or automated teller machine charges, shall not be considered interest. (Ga. L. 1908, p. 83, §§ 1, 2; Civil Code 1910, §§ 3444, 3445; Penal Code 1910, § 700; Code 1933, §§ 57-117, 57-9901; Ga. L. 1983, p. 1146, § 5; Ga. L. 2000, p. 1526, § 1; Ga. L. 2014, p. 213, § 2/HB 824.)

**The 2014 amendment**, effective April 15, 2014, added subsection (d).

**Editor's notes.** — Ga. L. 2014, p. 213, § 3/HB 824, not codified by the General

Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of February 19, 2014."

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

##### General Consideration

**Availability of civil remedies.** — Because the wife of the debtor company's president provided the debtor with two short term loans at monthly interest rates of 27.6 percent and 41.45 percent, respectively, the trustee for the debtor was entitled to recover the amount the debtor paid in interest under O.C.G.A. § 7-4-18. Ogier

v. Johnson (In re Healing Touch, Inc.), No. 02-91845, 2005 Bankr. LEXIS 1399 (Bankr. N.D. Ga. May 6, 2005).

**Interest rate not in excess of maximum.** — Trial court did not err by rejecting a debtor's argument that a lender's temporary acceptance of lowered payments without waiving full payment transformed the loan into a usurious transaction because the interest rate of



the loan was not in excess of the maximum applicable legal rate of 5 percent per month under O.C.G.A. § 7-4-18(a). *Latimore v. Vatacs Group, Inc.*, 317 Ga. App. 98, 729 S.E.2d 525 (2012).

**Cited** in *Douglas v. Bigley*, 278 Ga. App. 117, 628 S.E.2d 199 (2006); *Clay v. Oxendine*, 285 Ga. App. 50, 645 S.E.2d 553 (2007); *Cmt. State Bank v. Strong*, 651 F.3d 1241 (11th Cir. 2011).

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## CHAPTER 5

### CREDIT CARDS AND CREDIT CARD BANKS

#### 7-5-1. Short title.

#### RESEARCH REFERENCES

**Am. Jur. Proof of Facts.** — Violation of the Truth-In-Lending Act and Regulation Z, 73 POF3d 275.

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## CHAPTER 6

### CREDIT OR LOAN DISCRIMINATION

#### 7-6-1. Discrimination in extending credit or making loans prohibited.

**Law reviews.** — For article, “Religious Exercise as Credit Risk,” see 10 Bank. Dev. J. 119 (1993-1994).

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## CHAPTER 6A

### GEORGIA FAIR LENDING ACT

**Law reviews.** — For note on the 2003 amendments to O.C.G.A. §§ 7-6A-1 through 7-6A-11, see 20 Ga. St. U.L. Rev. 1 (2003).

#### 7-6A-1. Short title.

**Law reviews.** — For survey article on real property law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 397 (2003).

### 7-6A-3. Limitations of home loans.

#### JUDICIAL DECISIONS

**Improper late fees.** — Mortgage borrower stated a claim under O.C.G.A. § 7-6A-3(3) by alleging that a loan servicer improperly assessed late fees even though the borrower made all contractually required payments in a timely

manner. However, the borrower could not recover statutory damages under O.C.G.A. § 7-6A-7 for a violation of § 7-6A-3(3). *Stroman v. Bank of Am. Corp.*, 852 F. Supp. 2d 1366 (N.D. Ga. 2012).

### 7-6A-4. “Flipping” a home loan; costs and fees.

#### JUDICIAL DECISIONS

**Preemption.** — Debtors’ claims that a bank violated O.C.G.A. §§ 7-6A-4 and 7-6A-5 were preempted by federal law given an order issued by the Office of the Comptroller of the Currency clearly stating that the provisions of the Georgia Fair Lending Act, O.C.G.A. § 7-6A-1 et seq.,

affecting national banks’ real estate lending were either preempted by federal law or were moot as a result of the preemption. *Salvador v. Bank of Am., N.A.* (In re Salvador), 456 B.R. 610 (Bankr. M.D. Ga. 2011).

### 7-6A-5. Limitations of high-cost home loans.

#### JUDICIAL DECISIONS

**Preemption.** — Debtors’ claims that a bank violated O.C.G.A. §§ 7-6A-4 and 7-6A-5 were preempted by federal law given an order issued by the Office of the Comptroller of the Currency clearly stating that the provisions of the Georgia Fair Lending Act, O.C.G.A. § 7-6A-1 et seq.,

affecting national banks’ real estate lending were either preempted by federal law or were moot as a result of the preemption. *Salvador v. Bank of Am., N.A.* (In re Salvador), 456 B.R. 610 (Bankr. M.D. Ga. 2011).

### 7-6A-7. Violation of chapter.

#### JUDICIAL DECISIONS

**Statutory damages.** — Mortgage borrower stated a claim under O.C.G.A. § 7-6A-3(3) by alleging that a loan servicer improperly assessed late fees even though the borrower made all contractually required payments in a timely

manner. However, the borrower could not recover statutory damages under O.C.G.A. § 7-6A-7 for a violation of § 7-6A-3(3). *Stroman v. Bank of Am. Corp.*, 852 F. Supp. 2d 1366 (N.D. Ga. 2012).

### 7-6A-12. Application; preemption by federal law.

**Law reviews.** — For note on the 2003 enactment of this Code section, see 20 Ga. St. U.L. Rev. 1 (2003).

**7-6A-13. Promulgation of rules and regulations; creditor's good faith reliance on guidance from department constituting prima-facie evidence of compliance.**

**Law reviews.** — For note on the 2003 enactment of this Code section, see 20 Ga. St. U.L. Rev. 1 (2003).

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## CHAPTER 9

### GEORGIA MERCHANT ACQUIRER LIMITED PURPOSE BANK

Sec.		Sec.	
7-9-1.	Short title.	7-9-9.	Corporate existence; shareholders; authority to regulate and supervise sale of shares; legal effect of incorporation certificate; when business may begin.
7-9-2.	Definitions.	7-9-10.	Liability of applicant beginning business before authorized.
7-9-3.	Chartering of merchant acquirer limited purpose banks; regulation limited.	7-9-11.	Capital stock and paid-in surplus requirements.
7-9-4.	Application; fees; minimum number of employees.	7-9-12.	Limitations on depositors and deposit-taking activities; deposit insurance; self-acquiring activities not permitted.
7-9-5.	Articles of incorporation; filing; publication; registered agent; administration by board of directors.	7-9-13.	Enforcement by department; rules and regulations.
7-9-6.	Information to be included on charter application.		
7-9-7.	Investigation; approval or disapproval of charter application; impact of disapproval.		
7-9-8.	Issuance of certificate of incorporation by Secretary of State.		

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**Effective date.** — This chapter became effective March 28, 2012.

#### 7-9-1. Short title.

This chapter shall be known and may be cited as the “Georgia Merchant Acquirer Limited Purpose Bank Act.” (Code 1981, § 7-9-1, enacted by Ga. L. 2012, p. 43, § 1/HB 898.)

**Law reviews.** — For annual survey on business corporations, see 64 Mercer L. Rev. 61 (2012).



**7-9-2. Definitions.**

As used in this chapter, the term:

(1) “Commissioner” means the commissioner of banking and finance.

(2) “Corporation” means a corporation organized under the laws of this state, the United States, or any other state, territory, or dependency of the United States or under the laws of a foreign country.

(3) “Department” means the Department of Banking and Finance.

(4) “Eligible organization” means a corporation that at all times maintains an office in the State of Georgia at which it or its parent, affiliates, or subsidiaries employ at least 250 persons residing in this state who are directly or indirectly engaged in merchant acquiring activities or settlement activities, including providing the following services related to merchant acquiring activities or settlement activities, either for the eligible organization or on behalf of others:

- (A) Administrative support;
- (B) Information technology support;
- (C) Financial support; and
- (D) Tax and finance support.

(5) “Holding company” means any company that controls a merchant acquirer limited purpose bank. For purposes of this paragraph, the terms “company” and “control” shall have the meanings set forth in Code Section 7-1-605.

(6) “Merchant” means an individual or entity authorized by a payment card network to accept payments in exchange for goods or services.

(7) “Merchant acquirer limited purpose bank” means a corporation organized under this chapter and the activities of which are limited to those permitted under Code Section 7-9-12.

(8) “Merchant acquiring activities” means the various activities associated with effecting transactions within payment card networks, including obtaining and maintaining membership in one or more payment card networks; signing up and underwriting merchants to accept payment card network branded payment cards; providing the means to authorize valid card transactions at client merchant locations; facilitating the clearing and settlement of the transactions through a payment card network; providing access to one or more payment card networks to merchant acquirer limited purpose bank affiliates, customers, or customers of its affiliates; sponsoring the

participation of merchant acquirer limited purpose bank affiliates, customers, or customers of its affiliates in one or more payment card networks; and conducting such other activities as may be necessary, convenient, or incidental to effecting transactions within payment card networks.

(9) “Payment card network” means any organization, group, system, or other collection of individuals or entities that is organized to allow participants to accept or make payments for goods or services using a credit card, debit card, or any other payment device.

(10) “Self-acquiring activities” means the act of a merchant, for itself or through an affiliated entity, engaging in merchant acquiring or settlement activities on its own behalf for payments it, or its affiliated entity, receives for goods and services it, or its affiliated entity, provides to consumers.

(11) “Settlement activities” means the processing of payment card transactions to send to a payment card network for processing, to make payments to a merchant, and, ultimately, for cardholder billing. (Code 1981, § 7-9-2, enacted by Ga. L. 2012, p. 43, § 1/HB 898; Ga. L. 2014, p. 226, § 1/HB 883.)

**The 2014 amendment**, effective July 1, 2014, substituted “Code Section 7-9-12” for “Code Section 7-9-11” at the end of paragraph (7).

### **7-9-3. Chartering of merchant acquirer limited purpose banks; regulation limited.**

A corporation that performs merchant acquiring activities or settlement activities in this state may elect to obtain a charter from the department. Those corporations chartered by the department shall be subject to the provisions of this chapter and any rules and regulations adopted by the department for purposes of regulating chartered merchant acquirer limited purpose banks. The department shall have no authority to regulate a corporation performing merchant acquiring activities or settlement activities that has not been chartered by the department. (Code 1981, § 7-9-3, enacted by Ga. L. 2012, p. 43, § 1/HB 898.)

### **7-9-4. Application; fees; minimum number of employees.**

(a) A corporation that seeks to be chartered shall file an application with the department and shall pay applicable fees established by regulation of the department to defray the costs of the investigation and review of the application.

(b) The department shall, by regulation, prescribe annual examination fees, charter fees, registration fees, and supervision fees to be paid

by each merchant acquirer limited purpose bank. In addition, the department may, by regulation, prescribe reasonable application and related fees, special investigation fees, hearing fees, and fees to provide copies of any book, account, report, or other paper filed in its office or for any certification thereof or for processing any papers as required by this title. The department, in its discretion, may require the payment of such fees in any manner deemed to be efficient, including collection through automated clearing-house arrangements or other electronic means, so that the state receives funds no later than the date the payment is required to be made.

(c) The merchant acquirer limited purpose bank shall have, within one year after the date it receives its charter, no fewer than 50 employees located in this state devoted to merchant acquiring activities; provided, however, a merchant acquirer limited purpose bank may contract with an eligible organization for the performance of merchant acquiring activities, settlement activities, or any of the other services identified in paragraph (4) of Code Section 7-9-2, and when a merchant acquirer limited purpose bank enters into such contracts with an eligible organization for merchant acquiring activities, settlement activities, or any other services identified in paragraph (4) of Code Section 7-9-2, the minimum number of employees in this state shall be determined by the commissioner at a level to assure the continued and substantive presence of the merchant acquirer limited purpose bank in this state for the purpose of conducting its corporate affairs and operations. If a merchant acquirer limited purpose bank contracts with an eligible organization that is an affiliate of the merchant acquirer limited purpose bank, the commissioner shall consider the eligible organization's or its parent's, affiliates', or subsidiaries' employees engaged on behalf of the merchant acquirer limited purpose bank as employees of the merchant acquirer limited purpose bank for purposes of complying with this subsection. (Code 1981, § 7-9-4, enacted by Ga. L. 2012, p. 43, § 1/HB 898.)

**7-9-5. Articles of incorporation; filing; publication; registered agent; administration by board of directors.**

(a) A merchant acquirer limited purpose bank shall have articles of incorporation signed by the incorporator and shall set forth in the English language:

- (1) The name of the merchant acquirer limited purpose bank;
- (2) The street address and county where the main office will be located;
- (3) The name of the initial registered agent;
- (4) The street address where its initial registered office will be located;



(5) A statement that "This corporation is subject to the 'Georgia Merchant Acquirer Limited Purpose Bank Act'";

(6) The aggregate number of shares which the merchant acquirer limited purpose bank shall have authority to issue, and:

(A) If the shares are to consist of one class only, the par value of each of the shares; or

(B) If the shares are to be divided into classes, the number of shares of each class, the par value of each share of each class, a description of each class, and a statement of the preferences, redemption provisions, qualifications, limitations, restrictions, and the special or relative rights granted to or imposed upon the shares of each class;

(7) The term for which the merchant acquirer limited purpose bank is to exist, which shall be perpetual unless otherwise limited; and

(8) Any provision not inconsistent with law which the incorporators may choose to include for the regulation of the internal affairs and business of the merchant acquirer limited purpose bank.

(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate or operational powers set forth in this chapter.

(c) The applicant shall file with the department, in triplicate, the articles of incorporation, together with any fee required by the department. Such filing shall constitute an application for a charter and approval to operate as a merchant acquirer limited purpose bank. Immediately upon the filing of the articles of incorporation, the department shall certify one copy thereof and return it to the applicant, who shall, in conformity with Code Section 7-1-7 and on the next business day following the filing of the articles, transmit for publication in the newspaper which is the official organ of the county where the merchant acquirer limited purpose bank will be located a copy of the articles or, in lieu thereof, a statement that reads substantially as follows:

"An application for a charter to operate as a merchant acquirer limited purpose bank to be known as the \_\_\_\_\_ and to be located at \_\_\_\_\_ in \_\_\_\_\_ County, Georgia, will be made to the Secretary of State of Georgia in accordance with Chapter 9 of Title 7 of the Official Code of Georgia Annotated, known as the 'Georgia Merchant Acquirer Limited Purpose Bank Act.' A copy of the articles of incorporation of the proposed merchant acquirer limited purpose bank and the application have been filed with the Department of Banking and Finance."

The articles of incorporation or the statement must be published once a week for two consecutive weeks with the first publication occurring

within ten days of receipt by the newspaper of the articles of incorporation or statement.

(d) Each merchant acquirer limited purpose bank shall name a registered agent and inform the department and the Secretary of State of its current registered agent.

(e) The administration of business and affairs of a merchant acquirer limited purpose bank shall be the responsibility of a board of directors consisting of at least three directors, a majority of whom shall be residents of this state. (Code 1981, § 7-9-5, enacted by Ga. L. 2012, p. 43, § 1/HB 898.)

**7-9-6. Information to be included on charter application.**

(a) An application to the department to charter a merchant acquirer limited purpose bank shall include:

(1) Any information desired by the department in order to evaluate the proposed institution which shall be made available in the form specified by the department;

(2) A certificate of the Secretary of State showing that the proposed name of the merchant acquirer limited purpose bank has been reserved pursuant to Code Section 7-1-131; and

(3) Applicable fees established by regulation of the department to defray the expense of the investigation required by Code Section 7-9-7.

(b) An application to the department to own or control a merchant acquirer limited purpose bank shall include:

(1) Any information desired by the department in order to evaluate the proposed transaction which shall be made available in the form specified by the department; and

(2) Applicable fees established by regulation of the department to defray the expense of the investigation. (Code 1981, § 7-9-6, enacted by Ga. L. 2012, p. 43, § 1/HB 898.)

**7-9-7. Investigation; approval or disapproval of charter application; impact of disapproval.**

(a)(1) Upon receipt of the articles of incorporation and the filings and fees from the applicant as required under this chapter, the department shall conduct such investigation as it may deem necessary to ascertain whether it should approve the proposed merchant acquirer limited purpose bank. The department shall approve the charter of a

merchant acquirer limited purpose bank if it determines in its discretion that:

(A) The articles of incorporation and supporting items satisfy the requirements of this chapter;

(B) The character and fitness of the applicant, directors, and proposed officers are such as to warrant the belief that the business of the proposed merchant acquirer limited purpose bank will be honestly and efficiently conducted; and

(C) The capital structure of the merchant acquirer limited purpose bank is adequate in relation to the amount and character of the anticipated business of the merchant acquirer limited purpose bank.

(2) Within 90 days after receipt of the articles of incorporation and the filings and fees from the applicant as required by this chapter, the department shall approve or disapprove the charter of the proposed merchant acquirer limited purpose bank. The department may impose conditions to be satisfied prior to the issuance of its approval of the charter of a merchant acquirer limited purpose bank. If the department, in its discretion, approves the charter of the proposed merchant acquirer limited purpose bank with or without conditions, it shall deliver its written approval of the articles of incorporation and charter to the Secretary of State and notify the applicant of its action. If the department, in its discretion, disapproves the charter of the proposed merchant acquirer limited purpose bank, it shall notify the applicant of its disapproval of the charter and state generally the unfavorable factors influencing its decision. The decision of the department shall be conclusive, except that it may be subject to judicial review as provided in Code Section 7-1-90.

(b) In the event the department denies an application to charter a merchant acquirer limited purpose bank or an application to own or control a merchant acquirer limited purpose bank, the applicant may submit a new application at any time following notice of final denial. The applicant shall not be prejudiced by any prior denials by the department. (Code 1981, § 7-9-7, enacted by Ga. L. 2012, p. 43, § 1/HB 898.)

#### **7-9-8. Issuance of certificate of incorporation by Secretary of State.**

The Secretary of State shall immediately issue a certificate of incorporation to a proposed merchant acquirer limited purpose bank upon submission of:

(1) Written approval of the articles of incorporation by the department with a copy attached;



(2) An affidavit executed by the duly authorized agent or publisher of a newspaper swearing that the articles of incorporation or a summary statement publication as provided for in Code Section 7-9-5 have been published; and

(3) All required fees and charges required by law

so long as name of the proposed merchant acquirer limited purpose bank continues to be reserved or is available. The Secretary of State shall retain on file a copy of the certificate, the articles of incorporation, the department's approval of the articles of incorporation, and the publisher's certificate. (Code 1981, § 7-9-8, enacted by Ga. L. 2012, p. 43, § 1/HB 898.)

**7-9-9. Corporate existence; shareholders; authority to regulate and supervise sale of shares; legal effect of incorporation certificate; when business may begin.**

(a) The corporate existence of the merchant acquirer limited purpose bank shall begin upon the issuance of a certificate of incorporation by the Secretary of State. Those persons who subscribed for shares prior to filing of the articles, or their assignees, shall be shareholders in the merchant acquirer limited purpose bank. The department shall have full authority to regulate and supervise the activities of promoters, incorporators, subscribers for shares, and all persons soliciting offers to subscribe for shares in any merchant acquirer limited purpose bank established under this chapter. Any corporation in the process of seeking approval of a charter as a merchant acquirer limited purpose bank shall be classified as a merchant acquirer limited purpose bank in formation and persons named in the articles of incorporation or approved by the department as initial directors of such entity shall not be considered "agents" or "broker-dealers" as defined in Code Section 10-5-2.

(b) A certificate of incorporation shall be conclusive evidence that a merchant acquirer limited purpose bank has been incorporated; however, the state may institute proceedings to dissolve, wind up, and terminate a merchant acquirer limited purpose bank in conformity with Code Section 7-1-92 and applicable provisions of this chapter.

(c) A merchant acquirer limited purpose bank may begin business when:

(1) Capital stock of the merchant acquirer limited purpose bank satisfies the requirements of Code Section 7-9-11;

(2) Bylaws of the merchant acquirer limited purpose bank have been filed with the department;

(3) A registered agent and registered office for the merchant acquirer limited purpose bank has been designated in conformity with Code Section 7-1-132;

(4) The merchant acquirer limited purpose bank has been organized and is ready to begin the business for which it was incorporated;

(5) All conditions imposed by the department in giving its approval of the charter of the proposed merchant acquirer limited purpose bank under this chapter have been satisfied; and

(6) The department has received an affidavit attesting that the requirements of this subsection have been satisfied signed by the president or secretary and at least a majority of the directors of the merchant acquirer limited purpose bank. (Code 1981, § 7-9-9, enacted by Ga. L. 2012, p. 43, § 1/HB 898.)

#### **7-9-10. Liability of applicant beginning business before authorized.**

The applicant who charters a merchant acquirer limited purpose bank which transacts business before its capital stock have been paid in as required under this chapter shall be jointly and severally liable to creditors for the amounts not paid in by subscribers or any other deficiencies. Such liability shall be deemed an asset of the merchant acquirer limited purpose bank and may be enforced by it, its successors or assignees, by a shareholder suing derivatively, or by a receiver appointed by the department. (Code 1981, § 7-9-10, enacted by Ga. L. 2012, p. 43, § 1/HB 898.)

#### **7-9-11. Capital stock and paid-in surplus requirements.**

A merchant acquirer limited purpose bank shall at all times maintain capital stock and paid-in surplus as required by policies of the department but in no event less than \$3 million. (Code 1981, § 7-9-11, enacted by Ga. L. 2012, p. 43, § 1/HB 898.)

#### **7-9-12. Limitations on depositors and deposit-taking activities; deposit insurance; self-acquiring activities not permitted.**

(a) A merchant acquirer limited purpose bank shall only accept deposits from a corporation that owns a majority of the shares of the merchant acquirer limited purpose bank. A merchant acquirer limited purpose bank shall not operate in any manner that attracts depositors from the general public, and no deposit shall be withdrawn by the

depositor by check or similar means for payment to third parties or others. A merchant acquirer limited purpose bank shall not accept "brokered deposits" as that term is defined in the Federal Deposit Insurance Act as such existed on January 1, 2012, or the regulations adopted by the Federal Deposit Insurance Corporation in force and effect on January 1, 2012.

(b) A merchant acquirer limited purpose bank shall conduct its deposit-taking activities only from a single location within this state.

(c) A merchant acquirer limited purpose bank may apply to receive deposit insurance from the Federal Deposit Insurance Corporation or its successor agency.

(d) Notwithstanding subsection (a) of this Code section, the business conducted by a merchant acquirer limited purpose bank shall be merchant acquiring activities.

(e) A merchant acquirer limited purpose bank shall not engage in self-acquiring activities. (Code 1981, § 7-9-12, enacted by Ga. L. 2012, p. 43, § 1/HB 898.)

**U.S. Code.** — The Federal Deposit Insurance Act, referred to in this Code section, is codified at 12 U.S.C. § 1811 et seq.

### **7-9-13. Enforcement by department; rules and regulations.**

(a) All merchant acquirer limited purpose banks chartered by the department shall be subject to supervision, regulation, and examination by the department, including, but not limited to, the examination powers as provided in Code Sections 7-1-64 through 7-1-73, and the department shall have all enforcement powers provided in this title.

(b) In the event any chartered merchant acquirer limited purpose bank does not conduct its activities within the limitations provided in Code Section 7-9-12, the department may require such merchant acquirer limited purpose bank to cease all unauthorized activities. In the event such chartered merchant acquirer limited purpose bank fails to abide by such order, the department may:

(1) Impose upon the chartered merchant acquirer limited purpose bank or its parent holding company a penalty of up to \$10,000.00 per day for each day such order is violated; and

(2) Require divestiture of such chartered merchant acquirer limited purpose bank by any holding company not qualified to acquire such chartered merchant acquirer limited purpose bank on the date it ceased to operate within the limitations imposed by Code Section 7-9-12 and became a bank for purposes of this title.



(c) The department shall have the power to promulgate rules and regulations implementing the provisions of this chapter. (Code 1981, § 7-9-13, enacted by Ga. L. 2012, p. 43, § 1/HB 898; Ga. L. 2014, p. 226, § 2/HB 883.)

**The 2014 amendment**, effective July 1, 2014, substituted “Code Section 7-9-12” for “Code Section 7-9-11” in the middle of the first sentence of subsection (b) and near the end of paragraph (b)(2).

# TITLE 8

## BUILDINGS AND HOUSING

Chap.

2. Standards and Requirements for Construction, Alteration, Etc., of Buildings and Other Structures, 8-2-1 through 8-2-222.
3. Housing Generally, 8-3-1 through 8-3-332.
5. Art in State Buildings, 8-5-1 through 8-5-9.

### CHAPTER 2

#### STANDARDS AND REQUIREMENTS FOR CONSTRUCTION, ALTERATION, ETC., OF BUILDINGS AND OTHER STRUCTURES

##### Article 1

Sec.

##### Buildings Generally

###### PART 1

###### GENERAL PROVISIONS

Sec.

- 8-2-3. Requirements for toilets, shower heads, faucets, and other high-efficiency plumbing fixtures.
- 8-2-4. Fire sprinklers in single-family dwelling units.

###### PART 2

###### STATE BUILDING, PLUMBING, AND ELECTRICAL CODES

- 8-2-23. Amendment and revision of codes generally; installation of high-efficiency cooling towers.
- 8-2-24. Appointment of advisory committee; reimbursement of members for expenses; use of subcommittees; submittal of proposed amendments, modifications, and new provisions to committee; meeting times of committee.
- 8-2-25. State-wide application of mini-

mum standard codes; codes requiring adoption by municipality or county; adoption of more stringent requirements by local governments; adoption of standards for which state code does not exist; exemption for certain farm buildings or structures.

- 8-2-26. Enforcement of codes generally; employment and training of inspectors; contracts for administration and enforcement of codes.

- 8-2-31. Effect of part.

###### PART 2A

###### RESOLUTION OF CONSTRUCTION DEFECTS

- 8-2-35. Legislative findings and declarations.
- 8-2-36. Definitions.
- 8-2-37. Required compliance with this part.
- 8-2-38. Notice of claim; written response of contractor to claim; effect of contractor's failure to respond; inspection; offer of settlement and rejection of of-

- |  |   |
|--|---|
| <p>Sec.</p> <p>8-2-39.     fer; alteration of procedure for notice.</p> <p>8-2-40.     Discovery of additional defects after original notice given.</p> <p>8-2-41.     Effect of claimant's acceptance of settlement; subrogation of insurance.</p> <p>8-2-42.     Notice to consumer prior to beginning initial construction work.</p> <p>8-2-43.     Bribery of property or association managers regarding claims for damages arising out of construction defects prohibited; procedure for bringing action to remedy construction defects.</p> <p>8-2-44.     No cause of action created; contractor's right to seek recovery from subcontractor or other professional; contract controls over provisions; applicability.</p> | <p>Sec.</p> <p>8-2-113.    dustrialized buildings by commissioner or local government; modifications prohibited; costs; adoption of rules.</p> <p>8-2-114.    Promulgation of rules and regulations by commissioner; delegation of inspection authority; rules and regulations continued in full force and effect; advisory committee; powers of commissioner; training programs.</p> |
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#### PART 6

#### ELEVATORS, DUMBWAITERS, ESCALATORS, MANLIFTS, AND MOVING WALKS

- 8-2-100.    Definitions.
- 8-2-101.    Inspection and registration requirement; maintenance; alterations.
- 8-2-102.    Inspections.
- 8-2-104.    Employment of inspectors; inspection fees; inspection rules and regulations.
- 8-2-107.    Penalties.
- 8-2-108.    Appeals from orders or acts of inspectors.
- 8-2-109.    Consultations; creation of committees of consultants.
- 8-2-109.1.   Exceptions from part; audit of compliance of local governmental units.

#### Article 2

#### Factory Built Buildings and Dwelling Units

##### PART 1

##### UNITS DESIGNED TO BE AFFIXED TO FOUNDATIONS OR EXISTING BUILDINGS

- 8-2-111.    Definitions.
- 8-2-112.    Inspection and approval of in-

#### PART 2

##### MANUFACTURED HOMES

- 8-2-135.    Licenses for manufacturers who build, sell, or offer for sale manufactured homes in state; licenses for dealers of manufactured or mobile homes.
- 8-2-135.1.   Manufacturing inspection fee; reinspection; monitoring inspection fee.
- 8-2-144.    Reporting and accounting for fees.

#### PART 3

##### INSTALLATION OF MANUFACTURED HOMES AND MOBILE HOMES

- 8-2-161.    Duty of Commissioner to establish rules and procedures for licensure and installation.
- 8-2-164.    License required; permit purchase.

#### PART 3A

##### INSTALLATION OF PRE-OWNED MANUFACTURED HOMES

- 8-2-170.    Definitions.
- 8-2-171.    Health and safety standards for pre-owned manufactured homes; inspections; immunity.

#### PART 4

##### MANUFACTURED OR MOBILE HOMES

##### Subpart 1

##### General Provisions

- 8-2-180.    Definitions.
- 8-2-181.    Manufactured home as personal property; requirements



Sec.		Sec.	
	for real property status; requirements for Certificate of Permanent Location.		Certificate of Removal from Permanent Location required.
8-2-182.	Recording of Certificate of Permanent Location; responsibilities of commissioner; notification to tax assessors.	8-2-185.	Responsibilities of commissioner following receipt of Certificate of Removal from Permanent Location.
8-2-183.	Status of home as part of real property.	8-2-186.	Responsibilities of clerk of superior court upon receipt of Certificate of Removal from Permanent Location.
Subpart 1A		Subpart 3	
Permanently Affixed Manufactured Home as Real Property		Destruction of Manufactured Homes	
8-2-183.1.	Conditions under which manufactured home becomes real property; form and filing requirements for certificate of permanent location.	8-2-187.	Certificate of Destruction and requirements for issuance.
		8-2-188.	Retention of titles by commissioner.
		8-2-189.	Requirements for filing with clerk of superior court.
Subpart 2		Subpart 4	
Removal from Permanent Location		Fees	
8-2-184.	Reversion of manufactured home to personal property;	8-2-190.	Taxation as real property.
		8-2-191.	Filing fee.

RESEARCH REFERENCES

<b>Am. Jur. Trials.</b> — Alternative Dispute Resolution: Construction Industry, 52 Am. Jur. Trials 209.	<b>Construction Dispute Resolution — Arbitration and Beyond</b> , 100 Am. Jur. Trials 45.
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ARTICLE 1  
BUILDINGS GENERALLY

PART 1  
GENERAL PROVISIONS

8-2-3. Requirements for toilets, shower heads, faucets, and other high-efficiency plumbing fixtures.

(a) On or before July 1, 2012, the department, with the approval of the board, shall amend applicable state minimum standard codes to require the installation of high-efficiency plumbing fixtures in all new construction permitted on or after July 1, 2012.

(b) As used in this Code section, the term:

(1) “Construction” means the erection of a new building or the alteration of an existing building in connection with its repair or

renovation or in connection with making an addition to an existing building and shall include the replacement of a malfunctioning, unserviceable, or obsolete faucet, showerhead, toilet, or urinal in an existing building.

(2) "Department" means the Department of Community Affairs.

(3) "Lavatory faucet" means a faucet that discharges into a lavatory basin in a domestic or commercial installation.

(4) "Plumbing fixture" means a device that receives water, waste, or both and discharges the water, waste, or both into a drainage system. The term includes a kitchen sink, utility sink, lavatory, bidet, bathtub, shower, urinal, toilet, water closet, or drinking water fountain.

(5) "Plumbing fixture fitting" means a device that controls and directs the flow of water. The term includes a sink faucet, lavatory faucet, showerhead, or bath filler.

(6) "Pressurized flushing device" means a device that contains a valve that:

(A) Is attached to a pressurized water supply pipe that is of sufficient size to deliver water at the necessary rate of flow to ensure flushing when the valve is open; and

(B) Opens on actuation to allow water to flow into the fixture at a rate and in a quantity necessary for the operation of the fixture and gradually closes to avoid water hammer.

(7) "Toilet" means a water closet.

(8) "Water closet" means a fixture with a water-containing receptor that receives liquid and solid body waste and on actuation conveys the waste through an exposed integral trap into a drainage system and which is also referred to as a toilet.

(9) "WaterSense™" means a voluntary program of the United States Environmental Protection Agency designed to identify and promote water efficient products and practices.

(c) The standards related to high-efficiency plumbing fixtures shall include without limitation, the following:

(1) A water closet or toilet that:

(A) Is a dual flush water closet that meets the following standards:

(i) The average flush volume of two reduced flushes and one full flush may not exceed 1.28 gallons;

(ii) The toilet meets the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(I) American Society of Mechanical Engineers Standard A112.19.2-2008; and

(II) American Society of Mechanical Engineers Standard A112.19.14-2006 "Six-Liter Water Closets Equipped with a Dual Flushing Device"; and

(iii) Is listed to the WaterSense™ Tank-Type High Efficiency Toilet Specification; or

(B) Is a single flush water closet, including gravity, pressure assisted, and electro-hydraulic tank types, that meets the following standards:

(i) The average flush volume may not exceed 1.28 gallons;

(ii) The toilet must meet the performance, testing, and labeling requirements prescribed by the American Society of Mechanical Engineers Standard A112.192/CSA B45.1 or A112.19.14; and

(iii) The toilet must be listed to the WaterSense™ Tank-Type High Efficiency Toilet Specification;

(2) A shower head that allows a flow of no more than an average of 2.5 gallons of water per minute at 60 pounds per square inch of pressure;

(3) A urinal and associated flush valve that:

(A) Uses no more than 0.5 gallons of water per flush;

(B) Meets the performance, testing, and labeling requirements prescribed by the American Society of Mechanical Engineers Standard A112.19.2/CSA B45.1;

(C) For flushing urinals, meets all WaterSense™ specifications for flushing urinals; and

(D) Where nonwater urinals are employed, complies with American Society of Mechanical Engineers Standard A112.19.3/CSA B45.4 or American Society of Mechanical Engineers Standard A112.19.19/CSA B45.4. Nonwater urinals shall be cleaned and maintained in accordance with the manufacturer's instructions after installation. Where nonwater urinals are installed they shall have a water distribution line roughed-in to the urinal location at a minimum height of 56 inches (1,422 mm) to allow for the installation of an approved backflow prevention device in the event of a retrofit. Such water distribution lines shall be installed with



shut-off valves located as close as possible to the distributing main to prevent the creation of dead ends. Where nonwater urinals are installed, a minimum of one water supplied fixture rated at a minimum of one water supply fixture unit shall be installed upstream on the same drain line to facilitate drain line flow and rinsing;

(4) A lavatory faucet or lavatory replacement aerator that allows a flow of no more than 1.5 gallons of water per minute at a pressure of 60 pounds per square inch in accordance with American Society of Mechanical Engineers Standard A112.18.1/CSA B.125.1 and listed to the WaterSense™ High-Efficiency Lavatory Faucet Specification; and

(5) A kitchen faucet or kitchen replacement aerator that allows a flow of no more than 2.0 gallons of water per minute.

(d) To the extent that the standards set forth in this Code section exceed the National Energy Conservation Policy Act, as amended, and 10 C.F.R. 430.32, the department is directed to petition the Department of Energy for a waiver of federal preemption pursuant to 42 U.S.C. Section 6297(d).

(e) The department is directed to amend the applicable state minimum codes so as to permit counties and municipalities to provide by ordinance for an exemption to the requirements of subsection (c) of this Code section, relative to new construction and to the repair or renovation of an existing building, under the following conditions:

(1) When the repair or renovation of the existing building does not include the replacement of the plumbing or sewage system servicing toilets, faucets, or shower heads within such existing building;

(2) When such plumbing or sewage system within such existing building, because of its capacity, design, or installation, would not function properly if the toilets, faucets, or shower heads required by this part were installed;

(3) When such system is a well or gravity flow from a spring and is owned privately by an individual for use in such individual's personal residence; or

(4) When units to be installed are:

(A) Specifically designed for use by persons with disabilities;

(B) Specifically designed to withstand unusual abuse or installation in a penal institution; or

(C) Toilets for juveniles.

(f) The ordinances adopted by counties and municipalities pursuant to subsection (e) of this Code section shall provide procedures and requirements to apply for the exemption authorized by said subsection.

(g) Any person who installs any toilet, faucet, urinal, or shower head in violation of this Code section shall be guilty of a misdemeanor.

(h) Before July 1, 2012, a city, county, or authority shall adopt and enforce the provisions of this Code section in order to be eligible to receive any of the following grants, loans, or permits:

(1) A water or waste-water facilities grant administered by the Department of Natural Resources or the Department of Community Affairs; or

(2) A water or waste-water facilities loan administered by the Georgia Environmental Finance Authority.

(i) After July 1, 2012, the sale of a gravity tank-type, flushometer-valve, or flushometer-tank toilet that uses more than an average of 1.28 gallons of water per flush is prohibited in this state.

(j) The provisions of this Code section shall not be construed to prohibit counties or municipalities from adopting and enforcing local ordinances which provide requirements which are more stringent than the requirements of this Code section. (Ga. L. 1978, p. 914, §§ 1, 2; Ga. L. 1979, p. 776, § 1; Ga. L. 1990, p. 1212, § 1; Ga. L. 1991, p. 987, §§ 1, 2; Ga. L. 1995, p. 1302, § 15; Ga. L. 2010, p. 732, § 8/SB 370; Ga. L. 2010, p. 949, § 1/HB 244.)

**The 2010 amendments.** — The first 2010 amendment, effective June 1, 2010, rewrote this Code section. The second 2010 amendment, effective July 1, 2010, substituted “Georgia Environmental Finance Authority” for “Georgia Environmental Facilities Authority” at the end of paragraph (h)(2).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2010, the subsection (d) designation was inserted.

**Editor’s notes.** — Ga. L. 2010, p. 732, § 1, not codified by the General Assembly, provides: “The General Assembly recognizes the imminent need to create a culture of water conservation in the State of Georgia. The General Assembly also recognizes the imminent need to plan for water supply enhancement during future

extreme drought conditions and other water emergencies. In order to achieve these goals, the General Assembly directs the Georgia Department of Natural Resources to coordinate with its Environmental Protection Division, the Georgia Environmental Facilities Authority [now known as the Georgia Environmental Finance Authority], the Georgia Department of Community Affairs, the Georgia Forestry Commission, the Georgia Department of Community Health, including its Division of Public Health, the Georgia Department of Agriculture, and the Georgia Soil and Water Conservation Commission to work together as appropriate to develop programs for water conservation and water supply.”

## 8-2-4. Fire sprinklers in single-family dwelling units.

Neither the state residential and fire building code nor any residential and fire building code adopted by a political subdivision of the state adopted after May 24, 2010, shall include a requirement that fire sprinklers be installed in a single-family dwelling or a residential

building that contains no more than two dwelling units. (Code 1981, § 8-2-4, enacted by Ga. L. 2010, p. 450, § 1/HB 1196.)

**Effective date.** — This Code section became effective May 24, 2010.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2010, “adopted

after May 24, 2010,” was substituted for “adopted after the effective date of this Code section” near the middle of this Code section.

## PART 2

### STATE BUILDING, PLUMBING, AND ELECTRICAL CODES

#### 8-2-20. Definitions.

**Law reviews.** — For article, “Administrative Law,” see 63 Mercer L. Rev. 47 (2011).

### JUDICIAL DECISIONS

**International Residential Code for one and two family dwellings.** — Trial court did not err in denying the buyers’ motion asking the court to take judicial notice of Rule 110-11-1-.11 of the Georgia Department of Community Affairs (DCA), which related to the applicable building code for one- and two-family dwellings, because the trial court correctly found that the DCA exceeded its authority in adopting the International Residential Code for One and Two Family Dwellings (IRC) as a later edition of the Council of American Building Officials One- and Two-Family Dwelling Code (CABO); by its own terms, the IRC was not a subsequent or new edition of the CABO but an entirely new code based upon a study of a number of existing building codes. *Lumsden v. Williams*, 307 Ga. App. 163, 704 S.E.2d 458 (2010).

**No negligence per se claim for fail-**

**ing to follow building code.** — Trial court did not err in granting summary judgment to a condominium association on a visitor’s negligence per se claim arising from the visitor being injured in the revolving door because the absence of a separate door within 10 feet of the revolving door as required by the building code, and adopted by Georgia under O.C.G.A. § 8-2-20(9)(B)(i)(I), as the consequences to be guarded against by the installation of a side-swinging door within ten feet of a revolving door were not obvious and the visitor failed to show that the door malfunctioned in any manner. *Siegel v. Park Ave. Condo. Ass’n*, 322 Ga. App. 337, 744 S.E.2d 876 (2013).

**Cited in** *Fulton County v. Action Outdoor Adver., JV, LLC*, 289 Ga. 347, 711 S.E.2d 682 (2011); *Burroughs v. Mitchell County*, 313 Ga. App. 8, 720 S.E.2d 335 (2011).

#### 8-2-23. Amendment and revision of codes generally; installation of high-efficiency cooling towers.

(a)(1) The department, with the approval of the board, may from time to time revise and amend the state minimum standard codes either on its own motion or upon recommendation from any citizen, profession, state agency, or political subdivision of the state. Upon approval by a majority of the board, each such amendment, modification, or new provision shall be held to be in full force and effect as



if it were included in the original adopted code. Prior to the adoption of any proposed amendment, modification, or new provision, the department shall conduct such public hearings as are required by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," for the adoption of rules. Such public hearings shall be conducted at such places, on such dates, and at such times as may be determined by the department.

(2) Revisions of or amendments to the International Energy Conservation Code shall not become effective without the approval of the Division of Energy Resources of the Georgia Environmental Finance Authority. The department shall consult with the division during the revision or amendment of such code and shall submit such revisions or amendments to the division for approval at least ten days prior to the adoption thereof.

(3) The department shall make copies of amendments to codes available to members of the general public at such price as it deems reasonable to defray the costs of publication and handling. Notice of amendments to or adoption of a new edition of any state minimum standard code which is applicable state wide shall be provided by the department to the chief elected official and the chief building enforcement official of a municipality or county and to the chief fire official of each fire department certified pursuant to Article 2 of Chapter 3 of Title 25 at least ten days prior to the effective date of such amendments.

(4) The revision or amendment of any of the state minimum standard codes shall have reasonable and substantial connection with the public health, safety, and general welfare.

(b)(1) The department, with the approval of the board, may adopt a new edition of any state minimum standard code either on its own motion or upon recommendation from any profession, state agency, or political subdivision of this state. Upon approval by a majority of the board, each new code edition shall be held to be in full force and effect as if it was the original adopted code. Prior to the adoption of any new edition of a state minimum standard code, the department shall conduct such public hearings as are required by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," for the adoption of rules. Such public hearings shall be conducted at such places, on such dates, and at such times as may be determined by the department.

(2) Notwithstanding the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," or any other provision of law, the department shall not be required to make available or to distribute any copies of a new edition of a state minimum standard code adopted by the department.

(c)(1) On or before July 1, 2012, the department, with the approval of the board, shall amend applicable state minimum standard codes to require the installation of high-efficiency cooling towers in new construction permitted on or after July 1, 2012.

(2) As used in this subsection, the term “cooling tower” means a building heat removal device used to transfer process waste heat to the atmosphere.

(3) The standards related to high-efficiency cooling towers shall include without limitation the minimum standards prescribed by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 90.1 as adopted and amended by the department. (Ga. L. 1969, p. 546, § 5; Ga. L. 1978, p. 2212, §§ 4, 5; Ga. L. 1980, p. 1316, § 4; Ga. L. 1989, p. 1659, § 4; Ga. L. 1994, p. 1108, § 1; Ga. L. 2004, p. 551, § 3; Ga. L. 2010, p. 732, § 9/SB 370; Ga. L. 2010, p. 949, § 1/HB 244.)

**The 2010 amendments.** — The first 2010 amendment, effective June 1, 2010, added subsection (c). The second 2010 amendment, effective July 1, 2010, substituted “Georgia Environmental Finance Authority” for “Georgia Environmental Facilities Authority” near the end of the first sentence of paragraph (a)(2).

**Editor’s notes.** — Ga. L. 2010, p. 732, § 1, not codified by the General Assembly, provides: “The General Assembly recognizes the imminent need to create a culture of water conservation in the State of Georgia. The General Assembly also recognizes the imminent need to plan for water supply enhancement during future extreme drought conditions and other water emergencies. In order to achieve these goals, the General Assembly directs the

Georgia Department of Natural Resources to coordinate with its Environmental Protection Division, the Georgia Environmental Facilities Authority [now known as the Georgia Environmental Finance Authority], the Georgia Department of Community Affairs, the Georgia Forestry Commission, the Georgia Department of Community Health, including its Division of Public Health, the Georgia Department of Agriculture, and the Georgia Soil and Water Conservation Commission to work together as appropriate to develop programs for water conservation and water supply.”

**Law reviews.** — For article, “Conservation and Natural Resources,” see 27 Ga. St. U.L. Rev. 185 (2011).

## JUDICIAL DECISIONS

**Georgia Department of Community Affairs exceeded its authority.** — Trial court did not err in denying the buyers’ motion asking the court to take judicial notice of Rule 110-11-1-.11 of the Georgia Department of Community Affairs (DCA), which related to the applicable building code for one- and two-family dwellings, because the trial court correctly found that the DCA exceeded its authority in adopting the International Residential

Code for One and Two Family Dwellings (IRC) as a later edition of the Council of American Building Officials One- and Two-Family Dwelling Code (CABO); by its own terms, the IRC was not a subsequent or new edition of the CABO but an entirely new code based upon a study of a number of existing building codes. *Lumsden v. Williams*, 307 Ga. App. 163, 704 S.E.2d 458 (2010).

**8-2-24. Appointment of advisory committee; reimbursement of members for expenses; use of subcommittees; submittal of proposed amendments, modifications, and new provisions to committee; meeting times of committee.**

(a) For the purpose of assisting the department in carrying out the provisions of Code Section 8-2-23, the commissioner shall appoint an advisory committee to be composed of 21 members as follows:

- (1) The Georgia Safety Fire Commissioner or his or her designee as an ex officio member with full voting privileges;
- (2) The commissioner of public health or his or her designee as an ex officio member with full voting privileges;
- (3) The commissioner of community affairs or his or her designee as an ex officio member with full voting privileges;
- (4) One representative of the home-building industry;
- (5) One representative of the industrialized building industry;
- (6) One representative of the general contracting industry;
- (7) One representative of the profession of mechanical engineering;
- (8) One licensed architect;
- (9) One licensed electrical engineer;
- (10) One representative of the manufactured homes industry;
- (11) One licensed electrical contractor;
- (12) One building material dealer;
- (13) One licensed plumbing contractor;
- (14) One licensed conditioned-air contractor;
- (15) One licensed structural engineer;
- (16) Four municipal or county code enforcement officials; and
- (17) Two local fire officials.

(b) All appointments to the committee shall be for a term of four years; provided, however, that the initial members appointed pursuant to paragraphs (4), (5), (6), (7), (9), (15), (16), and (17) of subsection (a) of this Code section shall be appointed for a term to expire on the same date as the terms of other members. A member shall serve until his or her successor has been duly appointed. The commissioner shall make appointments to fill the unexpired portion of any term vacated for any reason. In making such appointments, the commissioner shall preserve



the composition of the committee as required by this Code section. Any appointive member who, during his or her term, ceases to meet the qualifications for original appointment shall thereby forfeit his or her membership on the committee. Membership on the committee shall not constitute public office, and no member shall be disqualified from holding public office by virtue of his or her membership. Each member of the committee shall serve without compensation, but each member of the committee shall be reimbursed for travel and other reasonable and necessary expenses incurred by him or her while attending called meetings of the committee.

(c) The advisory committee shall be empowered to use subcommittees as it deems necessary to carry out its duties and responsibilities. Members of such subcommittees shall be knowledgeable of the subject matter with which the subcommittee is concerned and shall be appointed by the commissioner upon the recommendation of the advisory committee. Such subcommittee members shall be reimbursed for travel and other necessary expenses while attending subcommittee meetings in the same manner as that of advisory committee members.

(d) Any amendments, modifications, or new provisions to the state minimum standard codes, when such are prepared, proposed, or recommended by the department, shall, prior to their submission to the board for approval, be submitted to the advisory committee for review and consideration. The department shall not forward any such amendment, modification, or new provision to the board without a favorable recommendation of a majority of the advisory committee.

(e) The advisory committee shall have at least two regular meetings annually and shall meet at other times as determined by the commissioner. (Ga. L. 1969, p. 546, §§ 2, 3; Ga. L. 1970, p. 734, § 1; Ga. L. 1971, p. 242, § 1; Ga. L. 1976, p. 651, § 5; Ga. L. 1976, p. 654, §§ 1, 2; Ga. L. 1980, p. 1316, § 4; Ga. L. 1982, p. 698, §§ 1-3; Ga. L. 1989, p. 14, § 8; Ga. L. 1989, p. 1659, § 5; Ga. L. 1997, p. 143, § 8; Ga. L. 2004, p. 551, § 4; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2011, p. 705, § 6-5/HB 214.)

**The 2009 amendment**, effective July 1, 2009, substituted “commissioner of community health” for “commissioner of human resources” in paragraph (a)(2).

**The 2011 amendment**, effective July 1, 2011, substituted “commissioner of pub-

lic health” for “commissioner of community health” in paragraph (a)(2).

**Law reviews.** — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

**8-2-25. State-wide application of minimum standard codes; codes requiring adoption by municipality or county; adoption of more stringent requirements by local governments; adoption of standards for which state code does not exist; exemption for certain farm buildings or structures.**

(a) On and after July 1, 2004, the state minimum standard codes enumerated in subdivisions (9)(A)(i)(I) through (9)(A)(i)(VIII) and (9)(B)(i)(I) through (9)(B)(i)(VIII) of Code Section 8-2-20 shall have state-wide application and shall not require adoption by a municipality or county. The governing authority of any municipality or county in this state is authorized to enforce the state minimum standard codes enumerated in this subsection.

(b) The state minimum standard codes enumerated in subdivisions (9)(A)(i)(IX) through (9)(A)(i)(XIV) and (9)(B)(i)(IX) through (9)(B)(i)(XI) of Code Section 8-2-20 shall not be applicable in a jurisdiction until adopted by a municipality or county. The governing authority of any municipality or county in this state is authorized to adopt and enforce the state minimum standard codes enumerated in this subsection in that subject area which is being regulated by the municipality or county, and a copy of the local ordinance or resolution adopting any such code shall be forwarded to the department in order that such municipality or county may be apprised of subsequent amendments in the state minimum standard code so adopted.

(c)(1) In the event that the governing authority of any municipality or county finds that the state minimum standard codes do not meet its needs, the local government may provide requirements not less stringent than those specified in the state minimum standard codes when such requirements are based on local climatic, geologic, topographic, or public safety factors; provided, however, that there is a determination by the local governing body of a need to amend the requirements of the state minimum standard code based upon a demonstration by the local governing body that local conditions justify such requirements not less stringent than those specified in the state minimum standard codes for the protection of life and property. All such proposed amendments shall be submitted by the local governing body to the department 60 days prior to the adoption of such amendment. Concurrent with the submission of the proposed amendment to the department, the local governing body shall submit in writing the legislative findings of the governing body and such other documentation as the local governing body deems helpful in justifying the proposed amendment. The department shall review and comment on a proposed amendment. Such comment shall be in writing and shall be sent to the submitting local government with a recommendation:

(A) That the proposed local amendment should not be adopted, due to the lack of sufficient evidence to show that such proposed local amendment would be as stringent as the state minimum standard codes and the lack of sufficient evidence to show that local climatic, geologic, topographic, or public safety factors require such an amendment;

(B) That the proposed local amendment should be adopted, due to a preponderance of evidence that such proposed local amendment would be as stringent as the state minimum standard codes and a preponderance of evidence that the local climatic, geologic, topographic, or public safety factors require such an amendment; or

(C) That the department has no recommendation regarding the adoption or disapproval of the proposed local amendments, due to the lack of sufficient evidence to show that such proposed local amendment would or would not be as stringent as the state minimum standard codes and the lack of sufficient evidence to show that local climatic, geologic, topographic, or public safety factors require or do not require such an amendment.

(2) The department shall have 60 days after receipt of a proposed local amendment to review the proposed amendment and make a recommendation as set forth in paragraph (1) of this subsection. In the event that the department fails to respond within the time allotted, the local governing body may adopt the proposed local amendment.

(3) In the event that the department recommends against the adoption of the proposed local amendment, a local governing body shall specifically vote to reject the department's recommendations before any local amendment may be adopted.

(4) No local amendment shall become effective until the local governing body has caused a copy of the adopted amendment to be filed with the department. A copy of an amendment shall be deemed to have been filed with the department when it has been placed in the United States mail, return receipt requested.

(5) Nothing in this subsection shall be construed so as to require approval by the department before a local amendment shall become effective.

(6) The department shall maintain a file of all amendments to the state minimum standard codes adopted by the various municipalities and counties in the state, which information shall be made available to the public upon request. The department may charge reasonable fees for copies of such information. An index of such amendments



shall be included in each new edition of a state minimum standard code.

(7) At the time of issuing a building permit, the issuing county or municipality shall notify the holder of the permit of any local amendments to the state minimum standard codes which are in effect for that county or municipality and that any such amendments are on file with the department. A county or municipality may satisfy this notice requirement by posting or providing a summary of the topic of such local amendment or amendments and the address and telephone number of the department.

(d) Except as otherwise provided in subsection (c) of this Code section, building related codes or ordinances dealing with the subjects of historic preservation, high-rise construction, or architectural design standards for which a state minimum standard code does not exist may be adopted by a local jurisdiction following review by the department. The department's review shall be limited to a determination that the proposed code or ordinance is consistent with the approved state minimum standard codes when common elements exist and is not less restrictive than the requirement of said codes. Changes to all other state minimum standard codes shall be approved only pursuant to the provisions of this Code section regarding local amendments.

(e)(1) As used in this subsection, the term:

(A) "Agriculture," "agricultural operations," or "agricultural or farm products" has the meaning provided by Code Section 1-3-3.

(B) "Farm" means real property or a portion thereof used for agricultural operations.

(C) "Farm building or structure" means a building or structure that is located on a farm and designed by the USDA Natural Resources Conservation Service (NRCS), not used for residential purposes, not intended primarily for public use, and used primarily for or in connection with agricultural operations for the sole purposes of manure storage and animal mortality composting or winter feeding and following the standards and specifications of NRCS practice codes 313 — Waste Storage Facility and 317 — Composting Facility as detailed in the USDA NRCS Field Office Technical Guide as such existed on January 1, 2011.

(2) Farm buildings or structures shall be exempt from the state minimum standard building codes provided for in subdivisions (9)(B)(i)(I) and (9)(B)(i)(IX) of Code Section 8-2-20 and any amendment thereto adopted by the department pursuant to Code Section 8-2-23 or by a municipality or county pursuant to this Code section. (Ga. L. 1969, p. 546, § 5; Ga. L. 1980, p. 1316, § 5; Ga. L. 1982, p. 3,

§ 8; Ga. L. 1989, p. 1659, § 7; Ga. L. 1990, p. 1364, § 2; Ga. L. 2000, p. 452, § 1; Ga. L. 2004, p. 551, § 5; Ga. L. 2011, p. 352, § 1/HB 223; Ga. L. 2012, p. 775, § 8/HB 942.)

**The 2011 amendment**, effective May 11, 2011, added subsection (e).

**The 2012 amendment**, effective May 1, 2012, part of an Act to revise, modern-

ize, and correct the Code, substituted “pursuant to this Code section” for “pursuant to Code Section 8-2-25” in paragraph (e)(2).

## **8-2-26. Enforcement of codes generally; employment and training of inspectors; contracts for administration and enforcement of codes.**

(a) The governing body of any municipality or county adopting any state minimum standard code shall have the power:

(1) To adopt by ordinance or resolution any reasonable provisions for the enforcement of the state minimum standard codes, including procedural requirements, provisions for hearings, provisions for appeals from decisions of local inspectors, and any other provisions or procedures necessary to the proper administration and enforcement of the requirements of the state minimum standard codes;

(2) To provide for inspection of buildings or similar structures to ensure compliance with the state minimum standard codes;

(3) To employ inspectors, including chief and deputy inspectors, and any other personnel necessary for the proper enforcement of such codes and to provide for the authority, functions, and duties of such inspectors;

(4) To require permits and to fix charges therefor;

(5) To contract with other municipalities or counties adopting any state minimum standard code to administer such codes and to provide inspection and enforcement personnel and services necessary to ensure compliance with the codes; and

(6) To contract with any other county or municipality whereby the parties agree that the inspectors of each contracting party may have jurisdiction to enforce the state minimum standard codes within the boundaries of the other contracting party.

(b) The commissioner shall be authorized to establish a training program for local inspectors whereby a representative of the department, upon the request of the governing authority of a county or municipality, may visit such county or municipality for the purpose of training the inspectors of such county or municipality in the effective enforcement of any state minimum standard code adopted by such county or municipality. The commissioner may from time to time

establish regional training programs whereby the inspectors of several different counties and municipalities may take advantage of the training made available by such regional training programs.

(c) No local inspector shall require any person performing work in compliance with a state minimum standard code or variations thereto which are in conformity with the provisions of this part to comply with the standards of any other building code not covered by this part.

(d)(1) In lieu of inspection by an inspector or other person employed by the governing authority of any county or municipality, a licensed master plumber or utility contractor shall have the option of installing a water or sewer line according to the alternative inspection procedure described in this subsection where the installation is on private property outside the building underground.

(2) If the master plumber or utility contractor elects to utilize this inspection procedure, he or she shall file with the local inspector:

(A) Notice that the water and sewer line will be installed in accordance with the International Plumbing Code and will be inspected pursuant to the alternative inspection procedure described in this subsection;

(B) A copy of his or her master plumber or utility contractor certificate issued by the State Construction Industry Licensing Board;

(C) A copy of his or her trenching competent person certificate;

(D) A certificate showing that a bond has been filed in accordance with paragraph (2) of subsection (b) of Code Section 43-14-12, except that such bond shall be in the amount of \$50,000.00 and issued by a surety rated "A," "Class VI," or better by the A. M. Best Company; and

(E) Within five business days after completion of the installation, a sworn certification that the water or sewer line has been installed in accordance with the International Plumbing Code.

(3) The department shall promulgate a standard form notice and a standard form certificate that shall be used to administer this subsection. Local inspectors shall make copies of the standard forms available to contractors.

(4) The master plumber or utility contractor shall be required to pay to the governing authority the applicable permit fee.

(5) Upon submission of the certification required by this subsection, the local governing authority shall be required to accept the inspection without the necessity of further inspection or approval,



except that the local governing authority may perform an inspection at any time and may issue a stop-work order if the work is found to be in violation of code requirements.

(6) Any other provision of this subsection notwithstanding, the alternative inspection procedure described in this subsection shall be applicable only to installations on private individual single-family residential property.

(e)(1) Any county or municipal building permit issued in this state to a general contractor or homebuilder for residential or commercial construction shall have prominently printed thereon at least one inch apart from any other text on such permit and in type size and boldness equal to or greater than any other type size and boldness in the body of the permit the following:

“The issuance of this permit authorizes improvements of the real property designated herein which improvements may subject such property to mechanics’ and materialmen’s liens pursuant to Part 3 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated. In order to protect any interest in such property and to avoid encumbrances thereon, the owner or any person with an interest in such property should consider contacting an attorney or purchasing a consumer’s guide to the lien laws which may be available at building supply home centers.”

(2) Any county or municipal construction permit, including but not limited to mechanical, plumbing, or electrical permits, issued in this state on existing residential or commercial property shall have prominently printed thereon at least one inch apart from any other text on such permit and in type size and boldness equal to or greater than any other type size and boldness in the body of the permit the following:

“The issuance of this permit authorizes improvements of the real property designated herein which improvements may subject such property to mechanics’ and materialmen’s liens pursuant to Part 3 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated. In order to protect any interest in such property and to avoid encumbrances thereon, the owner or any person with an interest in such property should consider contacting an attorney or purchasing a consumer’s guide to the lien laws which may be available at building supply home centers.”

(3) Any person or entity which is issued a permit which authorizes improvements to new or existing residential or commercial real property shall be required to:

(A) Post a copy of such permit in a conspicuous place in the vicinity of such property where such improvements are being undertaken; or

(B) Deliver a copy of the permit to the property owner within ten days after the permit is received.

(f) A local inspector, including a fire service employee enforcing a state or local fire safety standard, who specifies a code violation noted during an inspection shall, upon the written request of the permit holder, cite in writing the particular code book, section, and edition of the code which is the basis of the violation.

(g)(1) If a governing authority of a county or municipality cannot provide review of the documents intended to demonstrate that the structure to be built is in compliance with the Georgia State Minimum Standard Codes most recently adopted by the Department of Community Affairs and any locally adopted ordinances and amendments to such codes within 30 business days of receiving a written application for permitting in accordance with the code official's plan submittal process or inspection services within two business days of receiving a valid written request for inspection, then, in lieu of plan review or inspection by personnel employed by such governing authority, any person, firm, or corporation engaged in a construction project which requires plan review or inspection shall have the option of retaining, at its own expense, a private professional provider to provide the required plan review or inspection. As used in this subsection, the term "private professional provider" means a professional engineer who holds a certificate of registration issued under Chapter 15 of Title 43 or a professional architect who holds a certificate of registration issued under Chapter 4 of Title 43, who is not an employee of or otherwise affiliated with or financially interested in the person, firm, or corporation engaged in the construction project to be reviewed or inspected. The local governing authority shall advise the permit applicant in writing if requested by the applicant at the time the complete submittal application for a permit in accordance with the code official's plan submittal process is received that the local governing authority intends to complete the required plan review within the time prescribed by this paragraph or that the applicant may immediately secure the services of a private professional provider to complete the required plan review pursuant to this subsection. The plan submittal process shall include those procedures and approvals required by the local jurisdiction before plan review can take place. If the local governing authority states its intent to complete the required plan review within the time prescribed by this paragraph, the applicant shall not be authorized to use the services of a private professional provider as provided in this subsection. The permit applicant and the local governing authority may agree by mutual consent to extend the time period prescribed by this paragraph for plan review if the characteristics of the project warrant such an extension. However, if the local governing authority



states its intent to complete the required plan review within the time prescribed by this paragraph, or any extension thereof mutually agreed to by the applicant and the governing authority, and does not permit the applicant to use the services of a private professional provider and the local governing authority fails to complete such plan review in the time prescribed by this paragraph, or any extension thereof mutually agreed to by the applicant and the governing authority, the local governing authority shall issue the applicant a project initiation permit. The local governing authority shall be allowed to limit the scope of a project initiation permit and limit the areas of the site to which the project initiation permit may apply but shall permit the applicant to begin work on the project, provided that portion of the initial phase of work is compliant with applicable codes, laws, and rules. If a full permit is not issued for the portion requested for permitting, then the governing authority shall have an additional 20 business days to complete the review and issue the full permit. If the plans submitted for permitting are denied for any deficiency, the time frames and process for resubmittal shall be governed by subparagraphs (C) through (E) of paragraph (7) of this subsection. On or before July 1, 2007, the Board of Natural Resources shall adopt rules and regulations governing the review of erosion and sedimentation control plans under Part 9 of Chapter 7 of Title 12 to establish appropriate time frames for the submission and review of revised plan submittals where a deficiency or deficiencies in the submitted plans have been identified by the governing authority.

(2) Any plan review or inspection conducted by a private professional provider shall be no less extensive than plan reviews or inspections conducted by county or municipal personnel.

(3) The person, firm, or corporation retaining a private professional provider to conduct a plan review or an inspection shall be required to pay to the county or municipality which requires the plan review or inspection the same regulatory fees and charges which would have been required had the plan review or inspection been conducted by a county or municipal inspector.

(4) A private professional provider performing plan reviews under this subsection shall review construction plans to determine compliance with the Georgia State Minimum Standard Codes most recently adopted by the Department of Community Affairs and any locally adopted ordinances and amendments to such codes. Upon determining that the plans reviewed comply with the applicable codes, such private professional provider shall prepare an affidavit or affidavits on a form adopted by the Department of Community Affairs certifying under oath that the following is true and correct to the best of such private professional provider's knowledge and belief and in accordance with the applicable professional standard of care:



(A) The plans were reviewed by the affiant who is duly authorized to perform plan review pursuant to this subsection and who holds the appropriate license or certifications and insurance coverage stipulated in this subsection;

(B) The plans comply with the Georgia State Minimum Standard Codes most recently adopted by the Department of Community Affairs and any locally adopted ordinances and amendments to such codes; and

(C) The plans submitted for plan review are in conformity with plans previously submitted to obtain governmental approvals required in the plan submittal process and do not make a change to the project reviewed for such approvals.

(5) All private professional providers providing plan review or inspection services pursuant to this subsection shall secure and maintain insurance coverage for professional liability (errors and omissions) insurance. The limits of such insurance shall be not less than \$1 million per claim and \$1 million in aggregate coverage. Such insurance may be a practice policy or project-specific coverage. If the insurance is a practice policy, it shall contain prior acts coverage for the private professional provider. If the insurance is project-specific, it shall continue in effect for two years following the issuance of the certificate of final completion for the project. A local enforcement agency, local building official, or local government may establish, for private professional providers working within that jurisdiction, a system of registration listing the private professional providers within their areas of competency and verifying compliance with the insurance requirements of this subsection.

(6) The private professional provider shall be empowered to perform any plan review or inspection required by the governing authority of any county or municipality, including, but not limited to, inspections for footings, foundations, concrete slabs, framing, electrical, plumbing, heating ventilation and air conditioning (HVAC), or any and all other inspections necessary or required for the issuance of a building permit or certificate of occupancy by the governing authority of any county or municipality, provided that the plan review or inspection is within the scope of such private professional provider's area of competency. Nothing in this Code section shall authorize any private professional provider to issue a certificate of occupancy. Only a local governing authority shall be authorized to issue a certificate of occupancy.

(7)(A) The permit applicant shall submit a copy of the private professional provider's plan review report to the county or municipality. Such plan review report shall include at a minimum all of the following:

(i) The affidavit of the private professional provider required pursuant to this subsection;

(ii) The applicable fees; and

(iii) Any documents required by the local official and any other documents necessary to determine that the permit applicant has secured all other governmental approvals required by law.

(B) No more than 30 business days after receipt of a permit application and the affidavit from the private professional provider required pursuant to this subsection, the local building official shall issue the requested permit or provide written notice to the permit applicant identifying the specific plan features that do not comply with the applicable codes, as well as the specific code chapters and sections. If the local building official does not provide a written notice of the plan deficiencies within the prescribed 30 day period, the permit application shall be deemed approved as a matter of law and the permit shall be issued by the local building official on the next business day.

(C) If the local building official provides a written notice of plan deficiencies to the permit applicant within the prescribed 30 day period, the 30 day period shall be tolled pending resolution of the matter. To resolve the plan deficiencies, the permit applicant may elect to dispute the deficiencies pursuant to this subsection or to submit revisions to correct the deficiencies.

(D) If the permit applicant submits revisions to address the plan deficiencies previously identified, the local building official shall have the remainder of the tolled 30 day period plus an additional five business days to issue the requested permit or to provide a second written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections. If the local building official does not provide the second written notice within the prescribed time period, the permit shall be issued by the local building official on the next business day. In the event that the revisions required to address the plan deficiencies or any additional revisions submitted by the applicant require that new governmental approvals be obtained, the applicant shall be required to obtain such approvals before a new plan report can be submitted.

(E) If the local building official provides a second written notice of plan deficiencies to the permit applicant within the prescribed time period, the permit applicant may elect to dispute the deficiencies pursuant to this subsection or to submit additional revisions to correct the deficiencies. For all revisions submitted after the first

revision, the local building official shall have an additional five business days to issue the requested permit or to provide a written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections.

(8) Upon submission by the private professional provider of a copy of his or her inspection report to the local governing authority, said local governing authority shall be required to accept the inspection of the private professional provider without the necessity of further inspection or approval by the inspectors or other personnel employed by the local governing authority unless said governing authority has notified the private professional provider, within two business days after the submission of the inspection report, that it finds the report incomplete or the inspection inadequate and has provided the private professional provider with a written description of the deficiencies and specific code requirements that have not been adequately addressed.

(9) A local governing authority may provide for the prequalification of private professional providers who may perform plan reviews or inspections pursuant to this subsection. No ordinance implementing prequalification shall become effective until notice of the governing authority's intent to require prequalification and the specific requirements for prequalification have been advertised in the newspaper in which the sheriff's advertisements for that locality are published. The ordinance implementing prequalification shall provide for evaluation of the qualifications of a private professional provider only on the basis of the private professional provider's expertise with respect to the objectives of this subsection, as demonstrated by the private professional provider's experience, education, and training. Such ordinance may require a private professional provider to hold additional certifications, provided that such certifications are required by ordinance for plan review personnel currently directly employed by such local governing authority.

(10) Nothing in this subsection shall be construed to limit any public or private right of action designed to provide protection, rights, or remedies for consumers.

(11) This subsection shall not apply to hospitals, ambulatory health care centers, nursing homes, jails, penal institutions, airports, buildings or structures that impact national or state homeland security, or any building defined as a high-rise building in the State Minimum Standards Code; provided, however, that interior tenant build-out projects within high-rise buildings are not exempt from this subsection.



(12) If the local building official determines that the building construction or plans do not comply with the applicable codes, the official may deny the permit or request for a certificate of occupancy or certificate of completion, as appropriate, or may issue a stop-work order for the project or any portion thereof as provided by law, after giving notice to the owner, the architect of record, the engineer of record, or the contractor of record and by posting a copy of the order on the site of the project and opportunity to remedy the violation within the time limits set forth in the notice, if the official determines noncompliance with state or local laws, codes, or ordinances, provided that:

(A) The local building official shall be available to meet with the private professional provider within two business days to resolve any dispute after issuing a stop-work order or providing notice to the applicant denying a permit or request for a certificate of occupancy or certificate of completion; and

(B) If the local building official and the private professional provider are unable to resolve the dispute or meet within the time required by this Code section, the matter shall be referred to the local enforcement agency's board of appeals, if one exists, which shall consider the matter not later than its next scheduled meeting. Any decisions by the local official, if there is no board of appeals, may be appealed to the Department of Community Affairs as provided in this chapter. The Department of Community Affairs shall develop rules and regulations which shall establish reasonable time frames and fees to carry out the provisions of this paragraph.

(13) The local government, the local building official, and local building code enforcement personnel and agents of the local government shall be immune from liability to any person or party for any action or inaction by an owner of a building or by a private professional provider or its duly authorized representative in connection with building code plan review and inspection services by private professional providers as provided in this subsection.

(14) No local enforcement agency, local code official, or local government shall adopt or enforce any rules, procedures, policies, qualifications, or standards more stringent than those prescribed in this subsection. This subsection shall not preempt any local laws, rules, or procedures relating to the plan submittal process of local governing authorities.

(15) Nothing in this subsection shall limit the authority of the local code official to issue a stop-work order for a building project or any portion of such project, which may go into effect immediately as

provided by law, after giving notice and opportunity to remedy the violation, if the official determines that a condition on the building site constitutes an immediate threat to public safety and welfare. A stop work order issued for reasons of immediate threat to public safety and welfare shall be appealable to the local enforcement agency's board of appeals, if one exists, in the manner provided by applicable law. Any decisions by the local official, if there is no board of appeals, may be appealed to the Department of Community Affairs as provided in this chapter.

(16) When performing building code plan reviews or inspection services, a private professional provider is subject to the disciplinary guidelines of the applicable professional licensing board with jurisdiction over such private professional provider's license or certification under Chapters 4 and 15 of Title 43, as applicable. Any complaint processing, investigation, and discipline that arise out of a private professional provider's performance of building code plan reviews or inspection services shall be conducted by the applicable professional licensing board. Notwithstanding any disciplinary rules of the applicable professional licensing board with jurisdiction over such private professional provider's license or certification under Chapters 4 and 15 of Title 43, any local building official may decline to accept building code plan reviews or inspection services submitted by any private professional provider who has submitted multiple reports which required revisions due to negligence, noncompliance, or deficiencies.

(17) Nothing in this subsection shall apply to inspections exempted in Code Section 8-2-26.1. (Ga. L. 1969, p. 546, § 6; Ga. L. 1970, p. 734, § 2; Ga. L. 1971, p. 242, § 5; Ga. L. 1980, p. 1316, § 6; Ga. L. 1989, p. 1659, § 8; Ga. L. 1996, p. 1632, § 1; Ga. L. 1997, p. 550, § 1; Ga. L. 1998, p. 1033, § 1; Ga. L. 2000, p. 452, § 2; Ga. L. 2000, p. 456, § 1; Ga. L. 2004, p. 551, § 6; Ga. L. 2006, p. 506, § 1/HB 1385.)

**The 2006 amendment**, effective January 1, 2007, rewrote subsection (g).

### 8-2-31. Effect of part.

(a) Nothing in this part shall repeal or be construed as abrogating or otherwise affecting the power of any state department or agency to promulgate regulations, make inspections, or approve plans in accordance with any other applicable provisions of law.

(b) Nothing in this part shall be construed as repealing or otherwise affecting authorization for historic preservation districts established pursuant to Article 2 of Chapter 10 of Title 44, the "Georgia Historic Preservation Act."

(c) Nothing in this part shall be construed as repealing or otherwise affecting:

(1) Part 6 of this article, relating to elevators, dumbwaiters, escalators, manlifts, and moving walks;

(2) Article 2 of Chapter 15 of Title 25, the “Boiler Vessel Safety Act”;

(3) Chapter 3 of Title 30, relating to access to and use of public facilities by physically disabled persons; or

(4) The Georgia State Fire Code as adopted by the Safety Fire Commissioner pursuant to Code Section 25-2-13.

(d) Standards for the construction of manufactured homes covered under Part 2 of Article 2 of this chapter shall be governed by the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. Section 5401, et seq., and nothing in this part is intended to permit the adoption of any other standards for or local regulation of the construction of manufactured homes.

(e) Standards relative to liquefied petroleum gas shall be governed by Article 10 of Chapter 1 of Title 10 and no provision of this part shall be construed to permit the adoption of standards, rules, or regulations relative to liquefied petroleum gas by the Department of Community Affairs or the adoption by local governments of regulations or ordinances relative to liquefied petroleum gas in conflict with Article 10 of Chapter 1 of Title 10. (Ga. L. 1969, p. 546, § 5; Ga. L. 1980, p. 1316, § 10; Ga. L. 1981, p. 717, § 1; Ga. L. 1989, p. 1659, § 10; Ga. L. 1992, p. 2134, § 1; Ga. L. 1994, p. 97, § 8; Ga. L. 1995, p. 1302, § 14; Ga. L. 2012, p. 1144, § 9/SB 446.)

**The 2012 amendment**, effective May 15 of Title 25” for “Chapter 11 of Title 34”  
2, 2012, substituted “Article 2 of Chapter in paragraph (c)(2).

## PART 2A

### RESOLUTION OF CONSTRUCTION DEFECTS

#### 8-2-35. Legislative findings and declarations.

The legislature finds, declares, and determines that Georgia needs an alternative method to resolve legitimate construction disputes that would reduce the need for litigation while adequately protecting the rights of homeowners. The legislature declares that an effective alternative dispute resolution mechanism in certain construction defect matters should involve the claimant filing a notice of claim with the contractor that the claimant asserts is responsible for the defect and providing the contractor with the opportunity to resolve the claim



without litigation. (Code 1981, § 8-2-35, enacted by Ga. L. 2004, p. 500, § 1; Ga. L. 2006, p. 548, § 1/SB 573.)

**Editor's notes.** — Ga. L. 2006, p. 548, effective April 28, 2006, reenacted this Code section without change.

**Law reviews.** — For article, "Georgia

Condominium Law: Beyond the Condominium Act," see 13 Ga. St. B.J. 24 (2007). For article, "Construction Law," see 63 Mercer L. Rev. 107 (2011).

## JUDICIAL DECISIONS

**Cited** in *Lumsden v. Williams*, 307 Ga. App. 163, 704 S.E.2d 458 (2010). For sur-

vey article on construction law, see 59 Mercer L. Rev. 55 (2007).

## 8-2-36. Definitions.

As used in this part, the term:

(1) "Action" means any civil lawsuit, judicial action, or arbitration proceeding asserting a claim in whole or in part for damages or other relief in connection with a dwelling or common area caused by an alleged construction defect.

(2) "Association" means a corporation formed for the purpose of exercising the powers of the members of any common interest community.

(3) "Claimant" means anyone who asserts a claim concerning a construction defect.

(4) "Common area" means the common areas, improvements, and facilities that are owned or maintained by the association in a common interest community.

(5) "Construction defect" has the meaning assigned by a written, express warranty either provided by the contractor or required by applicable statutory law; if no written, express warranty or applicable statutory warranty provides a definition, then "construction defect" means a matter concerning the design, construction, repair, or alteration of a dwelling or common area, of an alteration of or repair or addition to an existing dwelling, or of an appurtenance to a dwelling or common area on which a person has a complaint against a contractor. The term may include any physical damage to the dwelling or common area, any appurtenance, or the real property on which the dwelling or appurtenance is affixed proximately caused by a construction defect.

(6) "Contractor" means any person, firm, partnership, corporation, association, or other organization that is engaged in the business of designing, developing, constructing, or selling dwellings or common areas, alterations of or additions to existing dwellings or common areas, or the repair of such improvements. The term includes:

(A) An owner, officer, director, shareholder, partner, or employee of the contractor;

(B) Subcontractors and suppliers of labor and materials used by a contractor in a dwelling or common area; and

(C) A risk retention group registered under applicable law, if any, that insures all or any part of a contractor's liability for the cost to repair a construction defect.

(7) "Dwelling" means a single-family house, duplex, or multifamily unit designed for residential use in which title to each individual residential unit is transferred to the owner under a condominium or cooperative system. A dwelling includes the systems, other components, improvements, other structures, or recreational facilities that are appurtenant to the house, duplex, or multifamily unit at the time of its initial sale but not necessarily a part of the house, duplex, or multifamily unit.

(8) "Serve" or "service" means deposit in the United States mail, postage prepaid for delivery by certified mail, return receipt requested or statutory overnight delivery to the last known address of the addressee. For a corporation, limited partnership, limited liability company, or other registered business organization, it means service on the registered agent or other agent for service of process authorized by law. (Code 1981, § 8-2-36, enacted by Ga. L. 2004, p. 500, § 1; Ga. L. 2006, p. 548, § 1/SB 573.)

**The 2006 amendment**, effective April 28, 2006, inserted "or common area" near the end of paragraph (1); added paragraph (4) and redesignated former paragraphs (4) through (7) as paragraphs (5) through (8), respectively; in paragraph (5), substituted "design, construction, repair, or alteration" for "design, construction, or repair" near the middle of the first sentence and added "or common area" following "dwelling" three times; in paragraph (6), substituted "dwellings or common areas, alterations of or additions to existing dwellings or common areas, or the repair of such improvements" for "dwellings or the alteration of or addition to an existing dwelling, repair of a new or existing dwelling, or construction, sale, alteration, addition, or repair of an appurtenance to a new or existing dwelling" near the end of the first sentence of the introductory paragraph and inserted "or common area" near

the end of subparagraph (6)(B); in the first sentence of paragraph (7), inserted "residential" and deleted "and shall include common areas and improvements that are owned or maintained by an association or by members of an association" from the end; and, in paragraph (8), substituted "deposit in the United States mail, postage prepaid for delivery by certified mail, return receipt requested or statutory overnight delivery" for "delivery by certified mail or statutory overnight delivery, return receipt requested," in the first sentence.

**Editor's notes.** — Ga. L. 2006, p. 548, § 3(c), not codified by the General Assembly, provides that the amendment to this Code section shall only apply with respect to causes of action or claims arising on or after April 28, 2006, and any prior causes of action or claims shall continue to be governed by prior law.

**8-2-37. Required compliance with this part.**

If a claimant files an action without first complying with the requirements of this part, on application by a party to the action, the court or arbitrator shall stay the action until the claimant has complied with the requirements of this part. To the extent that the action includes a cause of action for damages due to personal injury or death, such cause of action shall not be subject to stay pursuant to this Code section. (Code 1981, § 8-2-37, enacted by Ga. L. 2004, p. 500, § 1; Ga. L. 2006, p. 548, § 1/SB 573.)

**Editor's notes.** — Ga. L. 2006, p. 548, effective April 28, 2006, reenacted this Code section without change.

**JUDICIAL DECISIONS**

**Buyers' remedial repair efforts did not entitle sellers to summary judgment.** — Trial court erred in determining that the buyers' remedial repair efforts entitled the sellers to summary judgment under the Repair Act, O.C.G.A. § 8-2-36 et seq., in the buyers' action to recover for alleged construction defects in their home because the trial court followed the statutory procedure by staying the action to allow the parties an opportunity to resolve their differences outside of litigation. and when that process proved unsuccessful, the litigation proceeded; thus, the purpose of the Repair Act was served, and while the buyers' repairs to their home before the sellers were afforded an opportunity to resolve the dispute could create a jury issue as to any potential damages, that action did not authorize the grant of sum-

mary judgment in the sellers' favor. *Lumsden v. Williams*, 307 Ga. App. 163, 704 S.E.2d 458 (2010).

**Stay of proceedings.** — Trial court did not err in denying a contractor's motion to set aside a default judgment on the ground that a homeowner failed to give written notice of the homeowner's claims before filing a lawsuit, which the contractor argued was required under O.C.G.A. § 8-2-38(a), because the contractor did not ask for a stay, so the contractor was not entitled to one; the statutory remedy for a failure of the plaintiff to give notice of his or her claims pursuant to O.C.G.A. § 8-2-38(a) is a stay of the proceedings, but a defendant is entitled to such a stay only if the defendant asks for the stay. *Merry v. Robinson*, 313 Ga. App. 321, 721 S.E.2d 567 (2011).

**8-2-38. Notice of claim; written response of contractor to claim; effect of contractor's failure to respond; inspection; offer of settlement and rejection of offer; alteration of procedure for notice.**

(a) In every action subject to this part, the claimant shall, no later than 90 days before initiating an action against a contractor, provide service of written notice of claim on that contractor. The notice of claim shall state that the claimant asserts a construction defect claim or claims and is providing notice of the claim or claims pursuant to the requirements of this part. The notice of claim shall describe the claim or claims in detail sufficient to explain the nature of the alleged construction defects and the results of the defects. In addition, the claimant



shall provide to the contractor any evidence that depicts the nature and cause of the construction defect, including expert reports, photographs, and videotapes, if that evidence would be discoverable under evidentiary rules.

(b) Within 30 days after service of the notice of claim by a claimant required in subsection (a) of this Code section, each contractor that has received the notice of claim shall serve on the claimant, and on any other contractor that has received the notice of claim, a written response to the claim or claims, which either:

(1) Offers to settle the claim by monetary payment, the making of repairs, or a combination of both, without inspection; or

(2) Proposes to inspect the dwelling or common area that is the subject of the claim.

(c) If the contractor wholly rejects the claim and will neither remedy the alleged construction defect nor settle the claim or does not respond to the claimant's notice of claim within the time stated in subsection (b) of this Code section, the claimant may bring an action against the contractor for the claims described in the notice of claim without further notice except as otherwise provided under applicable law. A contractor that does not respond to a notice of claim within the time prescribed by subsection (b) of this Code section may not claim or assert that the absence of documents required to be provided with the notice of claim under subsection (a) of this Code section relieved the contractor from the contractor's obligation to respond to the notice of claim.

(d) If the claimant rejects the settlement offer made by the contractor, the claimant shall provide written notice of the claimant's rejection to the contractor and, if represented by legal counsel, his or her attorney. The notice shall include the reasons for the claimant's rejection of the contractor's proposal or offer. If the claimant believes that the settlement offer:

(1) Omits reference to any portion of the claim; or

(2) Was unreasonable in any manner,

the claimant shall in his or her written notice include those items that claimant believes were omitted and set forth in detail all known reasons why the claimant believes the settlement offer is unreasonable.

(e) If a proposal for inspection is made pursuant to paragraph (2) of subsection (b) of this Code section, the claimant shall, within 30 days of receiving the contractor's proposal, provide the contractor and its subcontractors, agents, experts, and consultants prompt and reasonable access to the dwelling or common area to inspect the dwelling or common area, document any alleged construction defects, and perform

any destructive or nondestructive testing required to fully and completely evaluate the nature, extent, and cause of the claimed defects and the nature and extent of any repairs or replacements that may be necessary to remedy the alleged defects. If destructive testing is required, the contractor shall give claimant advance notice of such tests and shall, after completion of the testing, return the dwelling or common area to its pretesting condition. If any inspection or testing reveals a condition that requires additional testing to allow the contractor to fully and completely evaluate the nature, cause, and extent of the construction defect, the contractor shall provide notice to the claimant of the need for such additional testing and the claimant shall provide prompt and reasonable access as set forth in this Code section. If a claim is asserted on behalf of owners of multiple dwellings or multiple owners of units within a multifamily complex, the contractor shall be entitled to inspect each of the dwellings or common areas which may be or appear to be affected by the alleged defect. The contractor shall commence and diligently pursue completion of all the desired inspections within the 30 day period after delivery of the contractor's written proposal. Inspection shall be completed within the same 30 day period if reasonable or within a reasonable period thereafter if completion is not reasonable within 30 days.

(f) Within 14 days following completion of the inspection and testing set forth in this Code section, the contractor shall serve on the claimant:

(1) A written offer to fully or partially remedy the construction defect at no cost to the claimant. Such offer shall include a description of any additional construction necessary to remedy the defect described in the claim and an anticipated timetable for the completion of such construction;

(2) A written offer to settle the claim by monetary payment;

(3) A written offer including a combination of repairs and monetary payment; or

(4) A written statement that the contractor will not proceed further to remedy the defect, along with the reasons for such rejection.

(g) If a claimant accepts a contractor's offer made pursuant to paragraph (1), (2), or (3) of subsection (f) of this Code section and the contractor does not proceed to make the monetary payment or remedy the construction defect or both within the agreed timetable, the claimant may bring an action against the contractor for the claim described in the notice of claim without further notice except as otherwise provided by applicable law. In such a situation, the claimant may also file the contractor's offer and claimant's acceptance, and such offer and acceptance will create a rebuttable presumption that a

binding and valid settlement agreement has been created and should be enforced by the court or arbitrator.

(h) If a claimant receives a written statement that the contractor will not proceed further to remedy the defect or if the contractor fails to serve the claimant with the required written offer or written statement within the time prescribed by subsection (f) of this Code section, the claimant may bring an action against the contractor for the claim described in the notice of claim without further notice except as otherwise provided by applicable law. The contractor's written statement shall include all known reasons for the rejection of the claim.

(i) If the claimant rejects the offer made by the contractor to remedy the construction defect or to settle the claim by monetary payment or a combination of each, the claimant shall serve written notice of the claimant's rejection on the contractor. The notice shall include all known reasons for the claimant's rejection of the contractor's offer.

(j) Upon receipt of a claimant's rejection and the reasons for such rejection, the contractor may, within 15 days of receiving the rejection, make a supplemental offer of repair or monetary payment or both to the claimant.

(k) If the claimant rejects the supplemental offer made by the contractor to repair the construction defect or to settle the claim by monetary payment or a combination of each, the claimant shall serve written notice of the claimant's rejection on the contractor. The notice shall include all known reasons for the claimant's rejection of the contractor's supplemental settlement offer.

(l) If a claimant rejects a reasonable offer, including any reasonable supplemental offer, made as provided by this part or does not permit the contractor to repair the construction defect pursuant to an accepted offer of settlement, the claimant may not recover an amount in excess of:

(1) The fair market value of the offer of settlement or the actual cost of the repairs made; or

(2) The amount of a monetary offer of settlement.

For purposes of this subsection, the trier of fact shall determine the reasonableness of an offer of settlement made pursuant to this part. If the claimant has rejected a reasonable offer, including any reasonable supplemental offer, and any other law allows the claimant to recover costs and attorneys' fees, then the claimant may recover no costs or attorneys' fees incurred after the date of his or her rejection.

(m) Any claimant accepting the offer of the contractor to remedy a construction defect shall do so by serving the contractor with a written



notice of acceptance within 30 days after receipt of the offer. If no response is served upon the contractor within the 30 day period, then the offer shall be deemed accepted.

(n) If a claimant accepts a contractor's offer to repair a construction defect described in a notice of claim, the claimant shall provide the contractor and its subcontractors, agents, experts, and consultants prompt and unfettered access to the dwelling or common area to perform and complete the construction by the timetable stated in the settlement offer.

(o) If, during the pendency of the notice, inspection, offer, acceptance, or repair process, an applicable limitations period would otherwise expire, the claimant may file an action against the contractor, but such action shall be immediately stayed until completion of the notice of claim process described in this part. This subsection shall not be construed to:

(1) Revive a statute of limitations period that has expired prior to the date on which a claimant's written notice of claim is served; or

(2) Extend any applicable statute of repose.

(p) After the sending of the initial notice of claim, a claimant and a contractor may, by written mutual agreement, alter the procedure for the notice of claim process described in this part. (Code 1981, § 8-2-38, enacted by Ga. L. 2004, p. 500, § 1; Ga. L. 2006, p. 548, § 1/SB 573.)

**The 2006 amendment**, effective April 28, 2006, inserted "or common area" following "the dwelling" throughout this Code section; added the second sentence of subsection (c); in subsection (e), substituted "dwellings or common areas which may be or appear to be affected by the alleged defect" for "dwellings or units" in the fourth sentence, and added the last two sentences; in subsection (h), added "or if the contractor fails to serve the claimant with the required written offer or written statement within the time prescribed by subsection (f) of this Code section" near the middle of the first sentence; and, in subsection (m), deleted "a reasonable period of time after receipt of the contrac-

tor's settlement offer but no later than" following "written notice of acceptance within" near the middle of the first sentence.

**Editor's notes.** — Ga. L. 2006, p. 548, § 3(c), not codified by the General Assembly, provides that the amendment to this Code section shall only apply with respect to causes of action or claims arising on or after April 28, 2006, and any prior causes of action or claims shall continue to be governed by prior law.

**Law reviews.** — For annual survey of trial practice and procedure, see 56 Mercer L. Rev. 433 (2004). For article, "Construction Law," see 63 Mercer L. Rev. 107 (2011).

## JUDICIAL DECISIONS

**Pre-litigation notice.** — Nothing in the Repair Act, O.C.G.A. § 8-2-36 et seq., contemplates that a claimant's action be dismissed for failing to provide the

pre-litigation notice under the Act, O.C.G.A. § 8-2-38, because any pre-notice action is stayed to afford the parties time to try to resolve their disputes; nothing in

the Act prevents a potential claimant from taking action to mitigate his or her losses. *Lumsden v. Williams*, 307 Ga. App. 163, 704 S.E.2d 458 (2010).

**Buyers' remedial repair efforts did not entitle sellers to summary judgment.** — Trial court erred in determining that the buyers' remedial repair efforts entitled sellers to summary judgment under the Repair Act, O.C.G.A. § 8-2-36 et seq., in the buyers' action to recover for alleged construction defects in their home because the trial court followed the statutory procedure by staying the action to allow the parties an opportunity to resolve their differences outside of litigation. and when that process proved unsuccessful, the litigation proceeded; thus, the purpose of the Repair Act was served, and while the buyers' repairs to their home before the sellers were afforded an opportunity to resolve the dispute could create a jury issue as to any potential damages, that act

did not authorize the grant of summary judgment in the sellers' favor. *Lumsden v. Williams*, 307 Ga. App. 163, 704 S.E.2d 458 (2010).

**Stay of proceedings.** — Trial court did not err in denying a contractor's motion to set aside a default judgment on the ground that a homeowner failed to give written notice of the homeowner's claims before filing a lawsuit, which the contractor argued was required under O.C.G.A. § 8-2-38(a), because the contractor did not ask for a stay, so the contractor was not entitled to one; the statutory remedy for a failure of the plaintiff to give notice of his or her claims pursuant to O.C.G.A. § 8-2-38(a) is a stay of the proceedings, but a defendant is entitled to such a stay only if the defendant asks for the stay. *Merry v. Robinson*, 313 Ga. App. 321, 721 S.E.2d 567 (2011).

**Cited in** *SunTrust Bank v. Hightower*, 291 Ga. App. 62, 660 S.E.2d 745 (2008).

## **8-2-39. Discovery of additional defects after original notice given.**

(a) A construction defect that is discovered after a claimant has provided a contractor with the initial claim notice may not be alleged in an action until the claimant has given the contractor who performed the original construction:

(1) Written notice of claim regarding the alleged defect as required by Code Section 8-2-38; and

(2) An opportunity to resolve the notice of claim in the manner provided in Code Section 8-2-38.

(b) A construction defect that is discovered during the pendency of an action filed in compliance with this part may be added as a supplemental or additional claim to the pending action if failure to add the claim would prejudice any legal rights of the claimant or the contractor; provided, however, that the claimant shall comply with the requirements of subsection (a) of this Code section, and such action shall be immediately stayed until completion of the notice of claim process, unless otherwise agreed by the parties. (Code 1981, § 8-2-39, enacted by Ga. L. 2004, p. 500, § 1; Ga. L. 2006, p. 548, § 1/SB 573.)

**The 2006 amendment**, effective April 28, 2006, designated the previously existing provisions as subsection (a) and added subsection (b).

**Editor's notes.** — Ga. L. 2006, p. 548, § 3(c), not codified by the General Assembly, provides that the amendment to this Code section shall only apply with respect

to causes of action or claims arising on or after April 28, 2006, and any prior causes of action or claims shall continue to be governed by prior law.

#### **8-2-40. Effect of claimant's acceptance of settlement; subrogation of insurance.**

(a) If a claimant accepts an offer made in compliance with this part and the contractor fulfills the offer in compliance with this part:

(1) The claimant shall thereafter be barred from bringing an action for the claim described in the notice of claim; and

(2) A contractor's performance of repairs or payment of money to a claimant made pursuant to this Code section shall not, by itself, create insurance coverage or otherwise affect the mutual rights and obligations of the parties under a contractor's liability insurance policy or, by itself, be considered a voluntary payment of an otherwise valid insured loss.

(b) An insurer paying a claim under this part shall be subrogated to the rights of the claimant to whom the amounts were paid against the person causing the construction defect, damages, or other reason for payment to the extent that claim payments were made, except that the insurer shall be required to pay any applicable part of costs, expenses, and attorneys' fees incurred in connection therewith. (Code 1981, § 8-2-40, enacted by Ga. L. 2004, p. 500, § 1; Ga. L. 2005, p. 499, § 1/HB 307; Ga. L. 2006, p. 548, § 1/SB 573.)

**The 2005 amendment**, effective May 2, 2005, rewrote paragraph (a)(2).

**The 2006 amendment**, effective April 28, 2006, substituted "attorneys' fees" for "attorney's fees" near the end of subsection (b).

**Editor's notes.** — Ga. L. 2006, p. 548,

§ 3(c), not codified by the General Assembly, provides that the amendment to this Code section shall only apply with respect to causes of action or claims arising on or after April 28, 2006, and any prior causes of action or claims shall continue to be governed by prior law.

#### **8-2-41. Notice to consumer prior to beginning initial construction work.**

(a) Upon entering into a contract for sale, construction, or improvement of a dwelling, the contractor shall provide notice to the owner of the dwelling of the contractor's right to resolve alleged construction defects before a claimant may commence litigation against the contractor. Such notice shall be conspicuous and may be included as part of the contract.

(b) The notice required by subsection (a) of this Code section shall be in substantially the following form:

**GEORGIA LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER**



ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO CONSTRUCTED, IMPROVED, OR REPAIRED YOUR HOME. NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS OR BOTH. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION. (Code 1981, § 8-2-41, enacted by Ga. L. 2004, p. 500, § 1; Ga. L. 2006, p. 548, § 1/SB 573.)

**Editor's notes.** — Ga. L. 2006, p. 548, effective April 28, 2006, reenacted this Code section without change.

**Law reviews.** — For annual survey of construction law, see 57 Mercer L. Rev. 79 (2005).

**8-2-42. Bribery of property or association managers regarding claims for damages arising out of construction defects prohibited; procedure for bringing action to remedy construction defects.**

(a) A person shall not provide or offer to provide anything of value, directly or indirectly, to a property manager of an association or to a member or officer of an association to induce the property manager, member, or officer to encourage or discourage the association to file a claim for damages arising from a construction defect. As used in this Code section, the term “anything of value” shall not include payments, services, or other items of value which the recipient would otherwise be entitled to receive under an existing contract.

(b) A property manager retained by an association shall not accept anything of value, directly or indirectly, in exchange for encouraging or discouraging the association that he or she manages to file a claim for damages arising from a construction defect.

(c) A member or officer of an association shall not accept anything of value, directly or indirectly, in exchange for encouraging or discouraging the association of which he or she is a member or officer to file a claim for damages arising from a construction defect.

(d) A person who knowingly violates subsection (a), (b), or (c) of this Code section shall be guilty of a misdemeanor.

(e) An association may bring an action against a contractor to recover damages resulting from construction defects in the common area of a common interest community, provided that:

(1) The members of the association have voted to approve commencement of an action by two-thirds of the votes cast, by statutory written ballot as provided in Code Section 14-3-708 or have approved commencement of an action by the affirmative vote of at least two-thirds of the total membership at a meeting of the members at which a quorum is present;

(2) The board of directors of the association and the contractor have met in person and conferred in a good faith attempt to resolve the association's claim, or the contractor has definitively declined or ignored the requests to meet with the board of directors of the association; and

(3) The association has otherwise satisfied all of the preaction requirements for a claimant to commence an action as set forth in this part.

(f) At least three business days in advance of the meeting at which the association members vote or at the time a statutory written ballot is circulated to the members to obtain approval of an action to recover damages resulting from construction defects in the common area of a common interest community, the association shall provide each owner a copy of the notice of claim provided to the contractor and an additional written description of claims and the reasons the board of the association is recommending consideration of the litigation.

(g) An association or an attorney for an association shall not employ a person to perform destructive tests to determine any damage or injury to a dwelling or common area caused by a construction defect unless:

(1) The person is licensed as a contractor pursuant to law;

(2) The association has obtained the prior written approval of each owner whose dwelling will be directly affected by such testing;

(3) The association or the person so employed obtains all permits required to conduct such tests and to repair any damage resulting from such tests; and

(4) Reasonable prior notice and opportunity to observe the tests is given to the contractor against whom an action may be brought as a result of the tests.

(h) The board of directors of an association may, without giving notice to the owners, employ a contractor and such other persons as are necessary to make such immediate repairs to a common area within the common interest community as are required to protect the health, safety, and welfare of the owners. (Code 1981, § 8-2-42, enacted by Ga. L. 2004, p. 500, § 1; Ga. L. 2006, p. 548, § 1/SB 573.)

**The 2006 amendment**, effective April 28, 2006, added the last sentence in subsection (a); substituted “an association” for “a homeowner’s association” near the beginning of subsection (b); rewrote subsections (e), (f), and (g); deleted former subsection (h); redesignated former subsection (i) as present subsection (h); and, in subsection (h), deleted “units” preceding “owners” twice and substituted “com-

mon area” for “unit or common element” near the middle of the subsection.

**Editor’s notes.** — Ga. L. 2006, p. 548, § 3(c), not codified by the General Assembly, provides that the amendment to this Code section shall only apply with respect to causes of action or claims arising on or after April 28, 2006, and any prior causes of action or claims shall continue to be governed by prior law.

**8-2-43. No cause of action created; contractor’s right to seek recovery from subcontractor or other professional; contract controls over provisions; applicability.**

(a) Nothing in this part shall create any cause of action on behalf of any claimant or contractor.

(b) This part does not apply to a contractor’s right to seek contribution, indemnity, or recovery against a subcontractor, supplier, or design professional for any claim made against a contractor by a claimant.

(c) In the event of any conflict or inconsistency between the provisions of this part and the provisions of any contract between a claimant and a contractor, the provisions of the contract shall govern and control.

(d) This part shall not apply to a contractor who is not required to be licensed under Chapter 41 of Title 43. (Code 1981, § 8-2-43, enacted by Ga. L. 2004, p. 500, § 1; Ga. L. 2006, p. 548, § 1/SB 573.)

**The 2006 amendment**, effective April 28, 2006, added subsections (c) and (d).

**Editor’s notes.** — Ga. L. 2006, p. 548, § 3(c), not codified by the General Assembly, provides that the amendment to this

Code section shall only apply with respect to causes of action or claims arising on or after April 28, 2006, and any prior causes of action or claims shall continue to be governed by prior law.

PART 6

ELEVATORS, DUMBWAITERS, ESCALATORS, MANLIFTS, AND MOVING WALKS

RESEARCH REFERENCES

**Am. Jur. Proof of Facts.** — Proof of Negligent or Defective Design, Manufacture, or Maintenance of Elevator, 50 POF3d 83.

**Am. Jur. Trials.** — Elevator Accident Cases, 7 Am. Jur. Trials 377.

Elevator Shaft Accidents — Plaintiff’s Remedies, 17 Am. Jur. Trials 755.

**8-2-100. Definitions.**

As used in this part, the term:



(1) "Alteration" means any change or addition to the equipment other than ordinary repairs or replacements.

(2) "Commissioner" means the Safety Fire Commissioner.

(3) "Dumbwaiter" means a hoisting and lowering mechanism which is equipped with a car which moves in guides in a substantially vertical direction, the floor area of which does not exceed nine square feet, the total inside height of which, whether or not provided with fixed or removable shelves, does not exceed four feet, the capacity of which does not exceed 500 pounds, and the use of which is exclusively for carrying materials. Such term includes a power dumbwaiter and a hand dumbwaiter.

(4)(A) "Elevator" means a hoisting and lowering mechanism designed to carry passengers or authorized personnel and equipped with a car which moves in fixed guides and serves two or more fixed landings.

(B) Except as specifically provided in subsection (a) of Code Section 8-2-102, "elevator" also means a freight elevator, gravity elevator, hand elevator, inclined elevator, multideck elevator, observation elevator, passenger elevator, power elevator, electric elevator, hydraulic elevator, direct-plunger hydraulic elevator, electrohydraulic elevator, maintained pressure hydraulic elevator, roped-hydraulic elevator, private residence elevator, and sidewalk elevator.

(5) "Enforcement authority" means the Commissioner, officers, and inspectors of the office authorized to enforce the provisions of this part and local inspectors authorized to enforce the provisions of this part.

(6) "Escalator" means a power driven, inclined, continuous stairway used for raising or lowering passengers.

(7) "Hand dumbwaiter" means a dumbwaiter driven by manual power, serving more than two consecutive stories, whose capacity exceeds 20 pounds and whose car platform area exceeds two square feet.

(8) "Hand elevator" means an elevator utilizing manual power to move the car.

(9) "Hoistway" means a shaftway or an opening through a building or structure for the travel of elevators, dumbwaiters, or material lifts, extending from the pit floor to the roof or floor above.

(10) "Manlift" means a device consisting of a power driven endless belt moving in one direction only which is provided with steps or

platforms and handholds attached to it for the transportation of personnel from floor to floor.

(11) “Moving walk” means a type of passenger-carrying device on which passengers stand or walk and in which the passenger-carrying surface remains parallel to its direction of motion and is uninterrupted.

(12) “Office” means the office of Safety Fire Commissioner.

(13) “Power dumbwaiter” means a dumbwaiter driven by the application of energy other than hand or gravity.

(14) “Power freight elevator” means an elevator used primarily for carrying freight, utilizing energy other than gravity or hand to move the car and on which only the operator and the persons necessary for unloading and loading the freight are permitted to ride.

(15) “Power passenger elevator” means an elevator used primarily to carry persons other than the operator and persons necessary for loading and unloading and utilizing energy other than gravity or hand to move the car. (Code 1981, § 8-2-100, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 2012, p. 1144, § 8/SB 446.)

**The 2012 amendment**, effective May 2, 2012, in paragraph (2), substituted “Safety Fire Commissioner” for “Commissioner of Labor”; deleted former paragraph (3), which read: “‘Department’ means the Department of Labor”; reded-

igned former paragraphs (4) through (12) as present paragraphs (3) through (11), respectively; in present paragraph (5), substituted “office” for “department”; and added present paragraph (12).

### **8-2-101. Inspection and registration requirement; maintenance; alterations.**

(a) All elevators, escalators, manlifts, moving walks, and dumbwaiters erected or placed in service after January 1, 1986, shall be inspected before being placed in service and shall be registered within 15 days after they are completed and placed in service.

(b) Every elevator, dumbwaiter, manlift, moving walk, and escalator shall be maintained by the owner or lessee in a safe operating condition and in conformity with the rules and regulations specified by subsection (b) of Code Section 8-2-104.

(c) Before any alteration can be made to any elevator, escalator, manlift, moving walk, or dumbwaiter already placed in service, the owner or lessee shall be required to notify the enforcement authority of any such alteration. The enforcement authority shall be authorized to conduct an inspection after any such alteration. (Code 1981, § 8-2-101, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 1985, p. 221, § 1; Ga. L. 2012, p. 1144, § 8/SB 446.)

**The 2012 amendment**, effective May 2, 2012, deleted the former first two sentences of subsection (a), which read: "Prior to January 1, 1986, the owner or lessee of every existing elevator, escalator, manlift, moving walk, and dumbwaiter shall register with the department or local enforcement authority each such elevator, escalator, manlift, moving walk, or dumbwaiter

owned or operated by him, giving type, rated load and speed, name of manufacturer, its location and the purpose for which it is used, and such other information as the department or local enforcement authority may require. Such registration shall be made on a form to be furnished by the department or local enforcement authority on request."

## 8-2-102. Inspections.

(a)(1) Power passenger elevators, power freight elevators, escalators, manlifts, and moving walks shall be inspected once during each six-month period.

(2) Hand elevators and power and hand dumbwaiters shall be inspected once during each 12 month period.

(b) Inspections and installations shall be made in accordance with the standards set forth in Part "X" of ANSI A17.1-1984, the American National Standard Practice for Inspection of Elevators, Escalators and Moving Walks Inspector's Manual ANSI A17.2, the Safety Standards for Manlifts ANSI A90.1-1976, the Safety Standard for Construction Hoists ANSI A10.4-1981 and ANSI A10.5-1981, the Safety Standard for Conveyors and Related Equipment ANSI B20.1-1984, or the latest revised rules and regulations adopted by the Commissioner. Any inspections performed under these codes shall cover the hoistway, associated equipment rooms, and access thereto, and shall include lobby smoke detectors.

(c) A report of any inspection required by this Code section shall be filed with the office if the inspection is made by a state enforcement authority or with the local governing authority if the inspection is made by a local enforcement authority. Copies of the reports for new installations shall also be filed with the state fire marshal for his or her information. Such reports shall be made within ten days after the inspection has been completed, on forms prescribed by the Commissioner or the local enforcement authority, and shall indicate whether the elevator, escalator, manlift, moving walk, or dumbwaiter is safe and whether it meets the applicable rules and regulations prescribed pursuant to subsection (b) of Code Section 8-2-104. After any such report is filed, the enforcement authority may require additional inspections to assure that any such elevator, escalator, manlift, moving walk, or dumbwaiter meets such rules and regulations.

(d) If any inspection report indicates that an elevator, escalator, manlift, moving walk, or dumbwaiter is in an unsafe condition which if continually operated may endanger lives or property, then the enforce-



ment authority may, at its discretion, require the owner or lessee to discontinue the use thereof until it has been made safe and in conformity with the rules and regulations specified in subsection (b) of Code Section 8-2-104.

(e) Elevator contractors who perform installations, alterations, repairs, or modifications on elevators, escalators, power freight elevators, moving walks, manlifts, or dumbwaiters, including the hoistways and machine rooms, shall be exempt from the requirements of Code Sections 43-14-8 and 43-14-8.1.

(f) Private residence elevators shall be exempt from mandatory periodic inspections but shall be required to have an initial construction inspection as provided in the rules and regulations of the Commissioner. At the request of the owner or user of a private residence elevator, an inspection may be performed by the office and an inspection report issued. The office shall charge the person requesting the report a fee as set by the Commissioner to cover actual expenses of the inspection. (Code 1981, § 8-2-102, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 1987, p. 1470, § 1; Ga. L. 2001, p. 4, § 8; Ga. L. 2012, p. 1144, § 8/SB 446.)

**The 2012 amendment**, effective May 2, 2012, in subsection (c), substituted “office” for “department” near the beginning, and inserted “or her” following “his” near the middle; in subsection (e), substituted

“Sections 43-14-8 and 43-14-8.1” for “Section 43-14-8 and Code Section 43-14-8.1” near the end; and, in subsection (f), twice substituted “office” for “department”.

### 8-2-103. Operating permits.

**Editor’s notes.** — Ga. L. 2012, p. 1144, § 8/SB 446, effective May 2, 2012, reenacted this Code section without change.

Refer to bound volume for text of this Code section.

### 8-2-104. Employment of inspectors; inspection fees; inspection rules and regulations.

(a) The Commissioner shall be authorized to employ inspectors to carry out the provisions of this part. The Commissioner shall also be authorized to certify other qualified persons to carry out the provisions of this part, including technically competent individuals of any company licensed to insure and insuring elevators in this state and technically competent individuals of a regularly established elevator inspection service. The Commissioner shall prescribe the qualifications, authority, functions, and duties of such inspectors.

(b)(1)(A) The Commissioner shall by rules and regulations prescribe various inspection fees and operating permit fees necessary to enable the state and local enforcement authorities to carry out the provisions of this part.

(B) The owners and users of elevators, dumbwaiters, escalators, manlifts, and moving walks which are inspected by certified inspectors in private business or with private corporations shall be exempt from the payment to the state or local enforcement authorities of the inspection fees provided in subparagraph (A) of this paragraph.

(2) Elevators, dumbwaiters, escalators, manlifts, and moving walks subject to operating permit inspections by private inspectors shall be inspected within 60 calendar days following the required reinspection date. Inspections not performed within this 60 calendar day period shall result in a civil penalty of \$500.00 for each elevator, dumbwaiter, escalator, manlift, or moving walk not inspected.

(3) Inspection fees due on elevators, dumbwaiters, escalators, manlifts, and moving walks subject to inspection by the chief or deputy inspectors or operating permit fees due from inspections performed by private inspectors shall be paid within 60 calendar days of completion of such inspections. Inspection fees or operating fees unpaid within 60 calendar days shall bear interest at the rate of 1.5 percent per month or any fraction of a month. Interest shall continue to accrue until all amounts due, including interest, are received by the Commissioner.

(4) The Commissioner may waive the collection of the penalties and interest assessed in paragraphs (2) and (3) of this subsection when it is reasonably determined that the delays in inspection or payment were unavoidable or due to the action or inaction of the office.

(c) The American National Standard Safety Code for elevators, dumbwaiters, escalators, and moving walks ANSI A17.1-1984 and the Safety Standards for Manlifts ANSI A90.1-1976 are adopted as rules and regulations of the office for the purposes of this part until otherwise amended by rules and regulations of the Commissioner.

(d) In addition to the rules and regulations adopted pursuant to subsections (b) and (c) of this Code section, the Commissioner shall be authorized to adopt such rules and regulations as may be reasonably necessary to carry out the provisions of this part.

(e) The Commissioner shall also have the power in any particular case to grant exceptions and variations from the literal requirements of the rules and regulations adopted pursuant to subsection (c) of this Code section. Such exceptions and variations shall be granted only in any particular case where it is clearly evident that they are necessary to prevent undue hardship or where the existing conditions prevent compliance with the literal requirements of the rules and regulations. In no case shall any exception or variation be granted unless, in the

opinion of the Commissioner, reasonable safety will be secured thereby. (Code 1981, § 8-2-104, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 1985, p. 221, § 2; Ga. L. 1987, p. 1470, § 3; Ga. L. 1991, p. 258, § 1; Ga. L. 1992, p. 6, § 8; Ga. L. 2004, p. 631, § 8; Ga. L. 2012, p. 1144, § 8/SB 446.)

**The 2012 amendment**, effective May 2, 2012, substituted “office” for “department” at the end of paragraph (b)(4); and

substituted “office” for “Department of Labor” in subsection (c).

### 8-2-105. Local government regulation and enforcement.

**Editor’s notes.** — Ga. L. 2012, p. 1144, § 8/SB 446, effective May 2, 2012, reenacted this Code section without change.

Refer to bound volume for text of this Code section.

### 8-2-106. Reporting of accidents; removal from service of equipment involved in accident.

**Editor’s notes.** — Ga. L. 2012, p. 1144, § 8/SB 446, effective May 2, 2012, reenacted this Code section without change.

Refer to bound volume for text of this Code section.

## JUDICIAL DECISIONS

**Spoliation from failure to report was factual issue.** — Trial court erred in granting summary judgment to appellees, a transit authority and a corporation, in a suit by an escalator rider. Based on testimony from the rider’s expert that appellees’ failure to properly maintain the escalator caused the incident and from an on-call mechanic who deposed that there clearly was a problem with the unit after the incident but that the mechanic did not contact an inspector despite knowing that the rider had been injured, there was a factual issue as to whether appellees spoliated evidence by violating O.C.G.A. § 8-2-106. *Thomas v. Metro. Atlanta RTA*, 300 Ga. App. 98, 684 S.E.2d 83 (2009).

Trial court erred in granting a directed verdict to a landlord in the tenants’ claims that the tenants were injured in a malfunctioning elevator. The landlord failed to report the incident and inspect the elevator as required by O.C.G.A. § 8-2-106, giving rise to the spoliation presumption under former O.C.G.A.

§ 24-4-22 (see now O.C.G.A. § 24-14-22) that the evidence would have favored the tenants. *Beach v. B.F. Saul Prop. Co.*, 303 Ga. App. 689, 694 S.E.2d 147 (2010).

**Spoliation of evidence.** — When an escalator causes an injury, Georgia law requires that the escalator be placed out of service until a state authority can inspect the escalator. The Georgia Court of Appeals has concluded that a violation of O.C.G.A. § 8-2-106 is a form of spoliation, which warrants a rebuttable presumption that the spoiled evidence would have been harmful to the spoliator. *Piechota v. Marriott Int’l, Inc.*, No. 04-12341, 2005 U.S. App. LEXIS 16506 (11th Cir. Aug. 5, 2005) (Unpublished).

**No violation shown.** — A worker in a premises liability case involving an elevator did not show that the premises owner violated O.C.G.A. § 8-2-106(c); the record was silent as to whether a state inspector ever inspected the freight elevator at issue after the accident. *Henson v. Georgia-Pacific Corp.*, 289 Ga. App. 777, 658 S.E.2d 391 (2008).



RESEARCH REFERENCES

**ALR.** — Liability of maintainer, repairer, or installer of automatic passenger elevator for injury resulting from use of elevator, 115 ALR5th 1.

8-2-107. Penalties.

(a) The installation, alteration, maintenance, and operation of the facilities and equipment regulated by or pursuant to the provisions of this part affect the public interest, and such regulation is necessary for the protection of the public health, safety, and welfare. Therefore, violations of this part or of rules and regulations adopted by or pursuant to this part are a public nuisance, harmful to the public health, safety, and welfare; and, in addition to other remedies provided by law, the actions of the Commissioner, the office, or any local enforcement authority under this part shall be enforceable by injunction properly applied for by the Commissioner or any other enforcement authority in any court of Georgia having jurisdiction over the defendant.

(b)(1) Any person, firm, partnership, or corporation which violates this part shall be guilty of a misdemeanor. Each day on which a violation occurs shall constitute a separate offense.

(2) In addition to the penalty provisions in subsection (a) of this Code section and paragraph (1) of this subsection, the Commissioner shall have the power, after notice and hearing, to levy civil penalties as prescribed in the rules and regulations of the office in an amount not to exceed \$5,000.00 upon any person, firm, partnership, or corporation failing to adhere to the requirements of this part and the rules and regulations promulgated under this part. The imposition of a penalty for a violation of this part or the rules and regulations promulgated under this part shall not excuse the violation or permit it to continue. (Code 1981, § 8-2-107, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 1995, p. 370, § 1; Ga. L. 2012, p. 1144, § 8/SB 446.)

**The 2012 amendment**, effective May 2, 2012, substituted “office” for “department” in the second sentence of subsection (a) and in the first sentence of paragraph (b)(2).

8-2-108. Appeals from orders or acts of inspectors.

(a) Any person aggrieved by an order or an act of an inspector under this chapter may, within 15 days of notice thereof, appeal from such order or act to the Commissioner who shall, within 30 days thereafter, issue an appropriate order either approving or disapproving said order or act. A copy of such order by the Commissioner shall be given to all interested parties.

(b) This part, as it applies to the Commissioner and the office, shall be governed by Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Code 1981, § 8-2-108, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 2012, p. 1144, § 8/SB 446.)

**The 2012 amendment**, effective May 2, 2012, substituted “office” for “department” in subsection (b).

### **8-2-109. Consultations; creation of committees of consultants.**

The Commissioner shall be authorized to consult with persons knowledgeable in the areas of construction, use, or safety of conveyances or facilities covered by this part and to create committees composed of such consultants to assist the Commissioner in carrying out his or her duties under this part. (Code 1981, § 8-2-109, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 1985, p. 221, § 3; Ga. L. 1989, p. 443, § 1; Ga. L. 2012, p. 1144, § 8/SB 446.)

**The 2012 amendment**, effective May 2, 2012, deleted former subsection (a) which read: “For the purpose of assisting the Commissioner in the adoption of rules and regulations and in carrying out the provisions of this part, the Commissioner shall consult with the Governor’s Employ-

ment and Training Council provided for in Code Section 34-14-1.”; deleted the subsection (b) designation; and near the end of the remaining language, deleted “and members of the Governor’s Employment and Training Council” following “such consultants” and inserted “or her”.

### **8-2-109.1. Exceptions from part; audit of compliance of local governmental units.**

(a) This part shall not apply to elevators located on vehicles operating under the rules of other state or federal authorities and used for carrying passengers or freight.

(b) This part shall not apply to any single-seat, single-passenger chairlift located in a building owned and operated by an incorporated or unincorporated nonprofit organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes.

(c) Any county, municipality, or other political subdivision which adopts the minimum rules and regulations as provided in Code Section 8-2-105 shall be audited on a semiannual basis for compliance by the office; and any laws, ordinances, or resolutions in conflict with this part shall be void and of no effect. (Code 1981, § 8-2-110, enacted by Ga. L. 1984, p. 1244, § 1; Code 1981, § 8-2-109.1, as redesignated by Ga. L. 1985, p. 149, § 8; Ga. L. 1987, p. 1470, § 5; Ga. L. 1995, p. 1046, § 1; Ga. L. 2012, p. 1144, § 8/SB 446.)

The 2012 amendment, effective May 2, 2012, substituted “office” for “Department of Labor” in subsection (c).

## ARTICLE 2

### FACTORY BUILT BUILDINGS AND DWELLING UNITS

#### PART 1

##### UNITS DESIGNED TO BE AFFIXED TO FOUNDATIONS OR EXISTING BUILDINGS

#### 8-2-111. Definitions.

As used in this part, the term:

(1) “Commissioner” means the commissioner of community affairs.

(2) “Component” means any assembly, subassembly, or combination of parts for use as a part of a building, which may include structural, electrical, plumbing, mechanical, and fire protection systems and other systems affecting health and safety.

(3) “Industrialized building” means any structure or component thereof which is designed and constructed in compliance with the state minimum standards codes and is wholly or in substantial part made, fabricated, formed, or assembled in manufacturing facilities for installation or assembly and installation on a building site and has been manufactured in such a manner that all parts or processes cannot be inspected at the installation site without disassembly, damage to, or destruction thereof.

(4) “Installation” means the assembly of an industrialized building on site and the process of affixing the industrialized building, component, or system to land, a foundation, footings, or an existing building.

(5) “Local government” means a county or municipality of this state.

(6) “Manufacture” means the process of making, fabricating, constructing, forming, or assembling a product from raw, unfinished, or semifinished materials.

(6.1) “Residential industrialized building” means any dwelling unit designed and constructed in compliance with the Georgia State Minimum Standard One and Two Family Dwelling Code which is wholly or in substantial part made, fabricated, formed, or assembled in a manufacturing facility and cannot be inspected at the installation site without disassembly, damage to, or destruction thereof. Any such structure shall not contain a permanent metal chassis and shall



be affixed to a permanent load-bearing foundation. The term shall not include manufactured homes as defined by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.

(7) “Site” means the entire tract, subdivision, or parcel of land on which the industrialized building is installed.

(8) “System” means structural, plumbing, mechanical, electrical, or fire safety elements, materials, or components used separately or combined for use in a building. (Ga. L. 1971, p. 364, § 2; Ga. L. 1980, p. 1316, § 13; Code 1981, § 8-2-111; Ga. L. 1982, p. 1637, § 1; Ga. L. 1992, p. 1158, § 1; Ga. L. 2010, p. 319, §§ 1, 2/HB 516; Ga. L. 2011, p. 752, § 8/HB 142.)

**The 2010 amendment**, effective May 20, 2010, inserted “designed and constructed in compliance with the state minimum standards codes and is” near the beginning of paragraph (3); and added paragraph (6.1).

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, revised punctuation in the first sentence of paragraph (6.1).

### JUDICIAL DECISIONS

**Cited** in *Carolina Tobacco Co. v. Baker*, 295 Ga. App. 115, 670 S.E.2d 811 (2008).

### **8-2-112. Inspection and approval of industrialized buildings by commissioner or local government; modifications prohibited; costs; adoption of rules.**

(a)(1) An industrialized building manufactured after the effective date of the rules adopted pursuant to Code Section 8-2-113 which is sold, offered for sale, or installed within this state must bear the insignia of approval issued by the commissioner.

(2) This Code section shall not apply to industrialized buildings which are inspected and approved by a local government which has jurisdiction at the site of installation and which are inspected at the place of and during the time of manufacture in accordance with standards established by the commissioner. The cost of the inspection shall be borne by the manufacturer. The commissioner shall be notified of the installation of all such buildings in a manner as the commissioner shall prescribe by rule.

(b)(1) All industrialized buildings and residential industrialized buildings bearing an insignia of approval issued by the commissioner pursuant to this part shall be deemed to comply with the state minimum standards codes and all ordinances and regulations enacted by any local government which are applicable to the manufac-

ture or installation of such buildings. The determination by the commissioner of the scope of such approval is final. No ordinance or regulation enacted by a county or municipality shall exclude residential industrialized buildings from being sited in such county or municipality in a residential district solely because the building is a residential industrialized building.

(2) Areas of county and municipal authority including, but not limited to, local land use and zoning, building setback, side and rear yard requirements, utility connections, and subdivision regulation, as well as the regulation of architectural and esthetic requirements, are specifically and entirely reserved to the county, if in the unincorporated area, or the municipality where the industrialized building or residential industrialized building is sited.

(3) No industrialized building or component bearing an insignia of approval issued by the commissioner pursuant to this part shall be in any way modified prior to or during installation unless approval is first obtained from the commissioner.

(4) Industrialized buildings which have been inspected and approved by a local government agency shall not be modified prior to or during installation unless approval for the modification is first obtained from the local government agency.

(c) The commissioner by rule shall establish a schedule of fees to pay the costs incurred for the work related to administration and enforcement of this Code section.

(d) All rules and regulations promulgated by the commissioner under this part shall be adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Ga. L. 1971, p. 364, § 3; Ga. L. 1980, p. 1316, § 13; Code 1981, § 8-2-112; Ga. L. 1982, p. 1637, § 1; Ga. L. 1983, p. 3, § 6; Ga. L. 1984, p. 22, § 8; Ga. L. 2010, p. 319, § 3/HB 516.)

**The 2010 amendment**, effective May 20, 2010, in paragraph (b)(1), in the first sentence, inserted "and residential industrialized buildings" near the beginning, substituted "shall be deemed to comply with the state minimum standards codes and all ordinances and regulations" for

"shall be held to comply with the requirements of all ordinances or regulations" near the middle, and added the third sentence; added paragraph (b)(2); and redesignated former paragraphs (b)(2) and (b)(3) as present paragraphs (b)(3) and (b)(4), respectively.

**8-2-113. Promulgation of rules and regulations by commissioner; delegation of inspection authority; rules and regulations continued in full force and effect; advisory committee; powers of commissioner; training programs.**

(a) The commissioner shall promulgate rules and regulations to interpret and make specific the provisions of this part. These rules and regulations shall include provisions imposing requirements reasonably consistent with recognized, nationally accepted standards. The commissioner shall adopt other rules and regulations necessary to carry out the provisions of this part.

(b) The commissioner shall enforce the provisions of this part and the rules and regulations adopted pursuant hereto, except that inspection authority may be delegated to a local government agency, an approved inspection agency, or an agency of another state in such manner as the commissioner shall determine.

(c) The rules promulgated by the State Building Administrative Board pursuant to an Act providing for certification of factory built housing and for the establishment of uniform health and safety standards and inspection procedures for factory built housing, approved April 1, 1971 (Ga. L. 1971, p. 364), as amended, shall continue in full force and effect until the effective date of rules adopted pursuant to this part. Units approved under the provisions of the State Building Administrative Board's rules shall be deemed to comply with the requirements of rules promulgated pursuant to this part.

(d) The commissioner shall consult with and obtain the advice of an advisory committee on industrialized buildings in the drafting, promulgation, and revision of rules and regulations to be adopted for the purpose of this part. The committee shall consist of 11 members appointed by the commissioner and approved by the Governor to serve at the commissioner's pleasure. Members shall be appointed for four-year terms, and no member of the committee shall be appointed to serve more than two full terms. Vacancies occurring during a term shall be filled by appointment by the commissioner for the remainder of the unexpired term, and such successor shall meet the requirements and criteria of selection of the person previously holding the vacant position. To be eligible to serve on the committee, each individual member shall be and remain actively involved in the profession or industry of his or her appointed committee position. The position of any member of the committee who, during his or her term of appointment, shall cease to meet the qualifications for original appointment shall be deemed to be vacated. Members of said committee shall consist of technically qualified, interested, and affected persons appointed by the commissioner from the following professional, technical, and occupational fields:



- (1) Two members shall be licensed design professionals representing two of the following: structural engineering, electrical engineering, architecture, or mechanical engineering;
  - (2) One member shall be a building code enforcement officer;
  - (3) One member shall be from the residential industrialized building industry;
  - (4) One member shall be from the commercial industrialized building industry;
  - (5) One member shall be from the industrialized building installation industry;
  - (6) One member shall be an elected member of the governing body of a municipality;
  - (7) One member shall be an elected member of the governing body of a county;
  - (8) One member shall be from the industrialized building evaluation-inspection service;
  - (9) One member shall be from a regional commission; and
  - (10) One member shall be the Commissioner of the Department of Community Affairs or his or her designee.
- (e) The advisory committee shall meet on call by the commissioner, and the members of the advisory committee shall be reimbursed for any reasonable and necessary travel and other expenses actually incurred by them while attending meetings of said committee.
- (f) Recommendations from this committee shall be subject to approval by an advisory committee appointed by the commissioner pursuant to Code Section 8-2-24.
- (g) The commissioner may set qualifications and employ and fix the compensation of any state inspectors or other employees necessary to carry out the provisions of this part. The commissioner may authorize such state inspectors to travel inside or outside the state for the purpose of inspecting industrialized buildings and manufacturing facilities to determine compliance of such structures with standards promulgated pursuant to this part. Upon the request of a local government, the commissioner may authorize a state inspector to visit any site of installation of industrialized buildings for the purpose of inspecting such installation on behalf of the local government requesting such service. The cost of any inspections made pursuant to this subsection shall be borne by the manufacturer in such manner as the commissioner may prescribe by rule.

(h) The commissioner may establish necessary training programs for a local government enforcement agency and inspection agency personnel. (Ga. L. 1971, p. 364, § 4; Ga. L. 1980, p. 1316, § 13; Code 1981, § 8-2-113; Ga. L. 1982, p. 1637, § 1; Ga. L. 1989, p. 1317, § 6.2; Ga. L. 2004, p. 631, § 8; Ga. L. 2007, p. 275, § 1/SB 246; Ga. L. 2008, p. 181, § 12/HB 1216; Ga. L. 2008, p. 324, § 8/SB 455.)

**The 2007 amendment**, effective July 1, 2007, rewrote subsection (d).

**The 2008 amendments.** — The first 2008 amendment, effective May 12, 2008, part of an Act to revise, modernize, and correct the Code, revised language in the

introductory language of subsection (d). The second 2008 amendment, effective July 1, 2009, substituted “regional commission” for “regional development center” in paragraph (d)(9).

## PART 2

### MANUFACTURED HOMES

#### **8-2-135. Licenses for manufacturers who build, sell, or offer for sale manufactured homes in state; licenses for dealers of manufactured or mobile homes.**

During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-132:

(1) Every manufacturer who manufactures manufactured homes outside the State of Georgia and who sells or offers for sale a manufactured home in Georgia shall apply for and obtain a license;

(2) Every manufacturer who manufactures manufactured homes in Georgia shall apply for and obtain a license;

(3) Every retailer and retail broker who sells or offers for sale new or used manufactured homes or mobile homes in Georgia shall apply for and obtain a license;

(4) Applications for licenses and renewal licenses shall be obtained from the Commissioner and submitted on or before January 1 of each year. All applicants shall certify in the application that all construction, electrical, heating, and plumbing standards will be complied with as set forth in this part and in the rules and regulations of the Commissioner; and

(5) The license and renewal license fee shall be \$440.00 per manufacturing plant which manufactures manufactured homes within the State of Georgia; \$440.00 per out-of-state manufacturing plant which manufactures manufactured homes for the purpose of offering for sale, or having such homes sold, within the State of Georgia; and \$300.00 per retailer location and retail broker which

sells, offers for sale, or transports to sell such homes within the State of Georgia. The license shall be valid from January 1 through December 31 of the year in which it was issued. The fee for delinquent renewal applications received after January 10 of each year shall be double the regular annual renewal fee. (Ga. L. 1968, p. 415, § 5; Ga. L. 1973, p. 4, § 5; Ga. L. 1979, p. 1286, § 1; Code 1981, § 8-2-135; Ga. L. 1982, p. 1376, §§ 2, 7; Ga. L. 1983, p. 456, § 1; Ga. L. 1984, p. 22, § 8; Ga. L. 1992, p. 2725, § 3; Ga. L. 1992, p. 2750, § 2; Ga. L. 1993, p. 91, § 8; Ga. L. 2004, p. 607, § 1; Ga. L. 2010, p. 9, § 1-19/HB 1055.)

**The 2010 amendment**, effective May 12, 2010, in the first sentence of paragraph (5), substituted “\$440.00” for “\$300.00” twice and substituted “\$300.00” for “\$200.00” near the end.

### **8-2-135.1. Manufacturing inspection fee; reinspection; monitoring inspection fee.**

(a) During such time as the Commissioner’s office is acting as the primary inspection agency pursuant to Section 623 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq., or the regulations issued thereunder, every manufacturer who manufactures manufactured homes in Georgia shall pay to the Commissioner a manufacturing inspection fee for each manufactured home manufactured in Georgia, irrespective of whether the manufactured home is offered for sale in this state. This manufacturing inspection fee shall be \$30.00 for each certification label, as defined in Section 623 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq. For any reinspection, a \$15.00 additional fee shall be charged.

(b) During such time as the Commissioner’s office is acting as the state administrative agency pursuant to Section 623 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq., a monitoring inspection fee paid by each manufacturer in Georgia for each manufactured home manufactured in this state shall be paid to the secretary of the United States Department of Housing and Urban Development or to the secretary’s agent for distribution in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq., and the regulations promulgated thereunder. (Code 1981, § 8-2-135.1, enacted by Ga. L. 2004, p. 607, § 1; Ga. L. 2010, p. 9, § 1-20/HB 1055.)

**The 2010 amendment**, effective May 12, 2010, in subsection (a), substituted “\$30.00” for “\$20.00” near the beginning of the second sentence and substituted “\$15.00” for “\$10.00” near the middle of the last sentence.



**8-2-144. Reporting and accounting for fees.**

The Commissioner of Insurance shall file a report on or before December 15 of each year accounting for all fees received by the Commissioner under this part and Part 3 of this article for the preceding 12 month period and for the actual costs of the inspection programs under this part and Part 3 of this article for the preceding 12 month period. Such report shall be provided to the chairpersons of the House Appropriations Committee, the Senate Appropriations Committee, the House Governmental Affairs Committee, and the Senate Regulated Industries and Utilities Committee, the director of the Office of Planning and Budget, the director of the Senate Budget and Evaluation Office, and the director of the House Budget and Research Office. (Code 1981, § 8-2-144, enacted by Ga. L. 2004, p. 607, § 1; Ga. L. 2008, p. VO1, § 1-2/HB 529; Ga. L. 2014, p. 866, § 8/SB 340.)

**The 2008 amendment**, effective January 28, 2008, substituted “the director of the Senate Budget Office, and the director of the House Budget Office” for “and the director of the Legislative Budget Office” at the end of the Code section. See the Editor’s note.

**The 2014 amendment**, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted “Senate Budget and Evaluation Office” for “Senate Budget Office” and substituted

“House Budget and Research Office” for “House Budget Office” near the end of the last sentence of this Code section.

**Editor’s notes.** — Ga. L. 2008, p. VO1, which amended this Code section, was passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

**PART 3****INSTALLATION OF MANUFACTURED HOMES AND MOBILE HOMES****8-2-161. Duty of Commissioner to establish rules and procedures for licensure and installation.**

During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-160.1, the Commissioner may:

(1) Establish rules and procedures for the licensure of installers as provided by Code Section 8-2-164 and the implementation and collection of an annual license fee, which shall be \$300.00; and

(2) Establish and publish in print or electronically rules and regulations governing the installation of manufactured homes and mobile homes to be followed in instances in which no manufacturer’s installation instructions are available. Such rules and regulations shall be equivalent to usual and ordinary manufacturer’s installation instructions. (Code 1981, § 8-2-161, enacted by Ga. L. 1992, p. 2750,

§ 3; Ga. L. 2004, p. 607, § 2; Ga. L. 2010, p. 9, § 1-21/HB 1055; Ga. L. 2010, p. 838, § 10/SB 388.)

**The 2010 amendments.** — The first 2010 amendment, effective May 12, 2010, substituted “\$300.00” for “\$200.00” at the end of paragraph (1). The second 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in paragraph (2).

**8-2-164. License required; permit purchase.**

During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-160.1:

(1) Any installer performing any installation of a manufactured home or a mobile home in this state shall first obtain a license from the Commissioner; provided, however, that persons employed by or contracting with a licensed installer to perform installations shall not be required to obtain such license; and

(2) In addition to the requirements of paragraph (1) of this Code section, any installer performing any installation of any new or pre-owned manufactured or mobile home in this state shall first purchase a permit from the Commissioner. The cost of such permit shall be \$60.00 for each manufactured or mobile home. Each installer shall provide any information required by the Commissioner to be submitted to obtain a permit. A permit shall be attached by the installer to the panel box of each manufactured or mobile home upon completion of installation. (Code 1981, § 8-2-164, enacted by Ga. L. 1992, p. 2750, § 3; Ga. L. 2004, p. 607, § 2; Ga. L. 2010, p. 9, § 1-22/HB 1055.)

**The 2010 amendment,** effective May 12, 2010, substituted “\$60.00” for “\$40.00” in the middle of the second sentence of paragraph (2).

PART 3A

INSTALLATION OF PRE-OWNED MANUFACTURED HOMES

**Effective date.** — This part became effective May 20, 2010.

**8-2-170. Definitions.**

As used in this part, the term:

(1) “Install” means to construct a foundation system and to place or erect a manufactured home on such foundation system. Such term includes, without limitation, supporting, blocking, leveling, securing,

or anchoring such manufactured home and connecting multiple or expandable sections of such manufactured home.

(2) “Manufactured home” means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length or, when erected on site, is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.

(3) “Pre-owned manufactured home” is any manufactured home that has been previously used as a residential dwelling and has been titled. (Code 1981, § 8-2-170, enacted by Ga. L. 2010, p. 306, § 1/SB 384.)

#### **8-2-171. Health and safety standards for pre-owned manufactured homes; inspections; immunity.**

(a) On and after September 1, 2010, any person who is the owner of real property or who has a right to the use of real property may install and occupy a pre-owned manufactured home on such property, provided that such pre-owned manufactured home is in compliance with the provisions of this part and any applicable county or municipal zoning ordinances.

(b) No county or municipality shall impose any health and safety standards or conditions based upon the age of a manufactured home.

(c) A county or municipality may establish health and safety standards and conditions and an inspection program for pre-owned manufactured homes which are relocated from their current locations.

(d) Neither a county or municipality nor any inspector thereof inspecting a pre-owned manufactured home pursuant to this Code section shall be liable for any injuries to persons resulting from any defects or conditions in such pre-owned manufactured home. (Code 1981, § 8-2-171, enacted by Ga. L. 2010, p. 306, § 1/SB 384.)



JUDICIAL DECISIONS

**Statute did not protect inspector whose purported inspection was made four years before the statute was enacted.** — O.C.G.A. § 8-2-171(d), providing that no municipal or county inspector inspecting a pre-owned manufactured home pursuant to that Code sec-

tion shall be liable for injuries to persons resulting from defects in the home, did not protect a city inspector whose inspection was made four years prior to the statute's enactment. *Vann v. Finley*, 313 Ga. App. 153, 721 S.E.2d 156 (2011).

PART 4

MANUFACTURED OR MOBILE HOMES

Subpart 1

General Provisions

8-2-180. Definitions.

As used in this part, the term:

(1) “Clerk of superior court” means the clerk of the superior court of the county in which the property to which the home is or is to be affixed is located.

(2) “Commissioner” means the state revenue commissioner and includes any county tax commissioner when so authorized by the state revenue commissioner to act on his or her behalf in carrying out the responsibilities of this part.

(3) “Home” means a manufactured home.

(4) “Manufactured home” has the meaning specified in paragraph (4) of Code Section 8-2-160. (Code 1981, § 8-2-180, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.)

**The 2005 amendment**, effective July 1, 2005, in paragraph (2), deleted “of motor vehicle safety” following “commissioner” in two places, added “means the state revenue commissioner and”, and added “state revenue” following “authorized by the”.

**The 2006 amendment**, effective July 1, 2006, deleted “or mobile home” from the end of paragraph (3) and deleted para-

graph (5), which read: “‘Mobile home’ has the meaning specified in paragraph (6) of Code Section 8-2-160.”

**Law reviews.** — For survey article on real property law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 397 (2003). For annual survey of real property law, see 58 Mercer L. Rev. 367 (2006).

**8-2-181. Manufactured home as personal property; requirements for real property status; requirements for Certificate of Permanent Location.**

(a) Except as provided in Subpart 1A of this part, a manufactured home shall constitute personal property and shall be subject to the “Motor Vehicle Certificate of Title Act,” Chapter 3 of Title 40, until such time as the home is converted to real property as provided for in this part or as provided in Subpart 1A of this part.

(b) A manufactured home shall become real property if:

(1) The home is or is to be permanently affixed on real property and one or more persons with an ownership interest in the home also has an ownership interest in such real property; and

(2) The owner of the home and the holders of all security interests therein execute and file a Certificate of Permanent Location:

(A) In the real estate records of the county where the real property is located; and

(B) With the commissioner.

(c) The Certificate of Permanent Location shall be in a form prescribed by the commissioner and shall include:

(1) The name and address of the owner of the home;

(2) The names and addresses of the holders of any security interest in and of any lien upon the home;

(3) The title number assigned to the home;

(4) A description of the real estate on which the home is or is to be located, including the name of the owner and a reference by deed book and page number to the chain of title of such real property; and

(5) Any other data the commissioner prescribes. (Code 1981, § 8-2-181, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.)

**The 2005 amendment**, effective July 1, 2005, deleted “of motor vehicle safety” following “commissioner” in three places in this Code section.

**The 2006 amendment**, effective July 1, 2006, in subsection (a), substituted “Except as provided in Subpart 1A of this part, a manufactured home” for “A manufactured home or mobile home” at the

beginning and added “or as provided in Subpart 1A of this part” to the end; and deleted “or mobile home” following “A manufactured home” in the introductory language of subsection (b).

**Law reviews.** — For annual survey of real property law, see 58 Mercer L. Rev. 367 (2006).

## JUDICIAL DECISIONS

**Application with federal law.** — Provisions of O.C.G.A. § 8-2-181 did not apply for consideration of whether or not the debtors' mobile home, purchased and placed on the real property at issue in April 2000, was a fixture to the property so that the provisions of 11 U.S.C. § 1322 applied to a creditor's mortgage interest. *Williamson v. Wash. Mut. Home Loans, Inc.* (In re *Williamson*), 387 B.R. 914 (Bankr. M.D. Ga. 2008).

In an appeal from a decision by a bankruptcy court in which that court found that a lender's claim was secured by a security interest in real property consist-

ing of the debtors' principal residence, which was a mobile home, and could not be modified under 11 U.S.C. § 1322(b)(2), O.C.G.A. § 8-2-181 was inapplicable. The Georgia law became effective on May 31, 2003, whereas the loan was made in April 2000, and the date of the loan was the critical date in determining whether the lender's claim was protected by § 1322(b)(2). *Williamson v. Wash. Mut. Home Loans, Inc.*, 400 B.R. 917 (M.D. Ga. 2009).

**Cited in** In re *Tucker*, No. 12-53285-JDW, 2013 Bankr. LEXIS 2664 (Bankr. M.D. Ga. June 25, 2013).

## **8-2-182. Recording of Certificate of Permanent Location; responsibilities of commissioner; notification to tax assessors.**

(a) When a Certificate of Permanent Location is properly filed with the clerk of superior court, the clerk shall record such certificate in the same manner as other instruments affecting the real property described in the Certificate of Permanent Location and shall charge and collect the fees usually charged for recording deeds and other instruments relating to real estate. Such certificate shall be indexed under the name of the current owner of the real property in both the grantor and grantee indexes. The clerk shall provide the owner with a certified copy of the Certificate of Permanent Location, reflecting its filing, and shall charge and collect the fees usually charged for the provision of certified copies of documents relating to real estate.

(b) Upon receipt of a certified copy of a properly executed Certificate of Permanent Location, along with the certificate of title, the commissioner shall file and retain a copy of such Certificate of Permanent Location together with all other prior title records related to the home. When a properly executed Certificate of Permanent Location has once been filed, the commissioner shall accept no further title filings with respect to that home, except as may be necessary to correct any errors in the department's records and except as provided in Subparts 2 and 3 of this part.

(c) When a Certificate of Permanent Location is so filed, the commissioner shall issue to the clerk of the superior court with whom the original Certificate of Permanent Location was filed confirmation by the commissioner that the Certificate of Permanent Location has been so filed and the certificate of title has been surrendered.



(d) Upon receipt of confirmation of the filing of the Certificate of Permanent Location from the commissioner, the clerk of superior court shall provide a copy of the Certificate of Permanent Location to the appropriate board of tax assessors or such other local official as is responsible for the valuation of real property. (Code 1981, § 8-2-182, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.)

**The 2005 amendment**, effective July 1, 2005, deleted “of motor vehicle safety” following “commissioner” throughout this Code section.

**The 2006 amendment**, effective July 1, 2006, substituted “Certificate of Perma-

nent Location” for “certificate” in five places throughout this Code section.

**Law reviews.** — For annual survey of real property law, see 58 Mercer L. Rev. 367 (2006).

### 8-2-183. Status of home as part of real property.

(a) When a Certificate of Permanent Location has been properly filed with the clerk of superior court, a certified copy of the Certificate of Permanent Location is properly filed with the commissioner, and the certificate of title is surrendered, the home shall become for all legal purposes a part of the real property on which it is located. Without limiting the generality of the foregoing, the home shall be subject to transfer by the owner of the real property, subject to any security interest in the real property and subject to foreclosure of any such interest, in the same manner as and together with the underlying real property.

(b) When a home has become a part of the real property as provided in this part, it shall be unlawful for any person to remove such home from the real property except with the written consent of the owner of the real property and the holders of all security interests in the real property and in strict compliance with the requirements of Subpart 2 of this part. Any person who violates this subsection shall be guilty of a misdemeanor of a high and aggravated nature. (Code 1981, § 8-2-183, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.)

**The 2005 amendment**, effective July 1, 2005, deleted “of motor vehicle safety” following “commissioner” in the first sentence of subsection (a).

**The 2006 amendment**, effective July

1, 2006, substituted “a certified copy of the Certificate of Permanent Location is” for “a certified copy thereof” in the middle of the first sentence of subsection (a).

## Subpart 1A

## Permanently Affixed Manufactured Home as Real Property

**8-2-183.1. Conditions under which manufactured home becomes real property; form and filing requirements for certificate of permanent location.**

(a) A manufactured home which has not been issued a certificate of title from the commissioner and which is sold on or after July 1, 2006, shall become real property if:

(1) The home is or is to be permanently affixed on real property and one or more persons with an ownership interest in the home also has an ownership interest in such real property; and

(2) The owner of the home and the holders of all security interests therein execute and file a Certificate of Permanent Location in the real estate records of the county where the real property is located.

(b) The Certificate of Permanent Location shall be in a form prescribed by the commissioner and shall include:

(1) The name and address of the owner of the home;

(2) The names and addresses of the holders of any security interest in and of any lien upon the home;

(3) As an attachment, the manufacturer's original certificate of origin; and

(4) A description of the real estate on which the home is or is to be located, including the name of the owner and a reference by deed book and page number to the chain of title of such real property.

(c) A Certificate of Permanent Location shall be filed with the clerk of superior court, and the clerk shall record such certificate in the same manner as other instruments affecting the real property described in the Certificate of Permanent Location and shall charge and collect the fees usually charged for recording deeds and other instruments relating to real estate. Such certificate shall be indexed under the name of the current owner of the real property in both the grantor and grantee indexes.

(d) When a Certificate of Permanent Location is properly filed with the clerk of superior court, the home shall become for all legal purposes a part of the real property on which it is located. Without limiting the generality of the foregoing, the home shall be subject to transfer by the owner of the real property, subject to any security interest in the real property and subject to foreclosure of any such interest, in the same manner as and together with the underlying real property.

(e) When a properly executed Certificate of Permanent Location has once been filed, the commissioner shall accept no further title filings with respect to that home, except as may be necessary to correct any errors in the department's records and except as provided in Subparts 2 and 3 of this part.

(f) Upon recording the Certificate of Permanent Location, the clerk of superior court shall provide a copy of the Certificate of Permanent Location to the appropriate board of tax assessors or such other local official as is responsible for the valuation of real property.

(g) When a home has become a part of the real property as provided in this part, it shall be unlawful for any person to remove such home from the real property except with the written consent of the owner of the real property and the holders of all security interests in the real property and in strict compliance with the requirements of Subpart 2 of this part. Any person who violates this subsection shall be guilty of a misdemeanor of a high and aggravated nature. (Code 1981, § 8-2-183.1, enacted by Ga. L. 2006, p. 702, § 1/SB 253.)

**Effective date.** — This Code section real property law, see 58 Mercer L. Rev. became effective July 1, 2006. 367 (2006).

**Law reviews.** — For annual survey of

## Subpart 2

### Removal from Permanent Location

#### **8-2-184. Reversion of manufactured home to personal property; Certificate of Removal from Permanent Location required.**

(a) A home which has previously become real property shall become personal property if:

(1) The manufactured home is or is to be removed from the real property with the written consent of the owner of the real property and the holders of all security interests therein; and

(2) The owner of the real property and the holders of all security interests therein execute and file a Certificate of Removal from Permanent Location:

(A) With the commissioner; and

(B) In the real estate records of the county where the real property is located.

(b) The Certificate of Removal from Permanent Location shall be in a form prescribed by the commissioner and shall include:



- (1) The name and address of the owner;
- (2) The names and addresses of the holders of any security interest and of any lien;
- (3) The title number formerly assigned to the home, if applicable;
- (4) A description of the real estate on which the home was previously located, including the name of the owner and a reference by deed book and page number to the recording of the former Certificate of Permanent Location; and
- (5) Any other data the commissioner prescribes. (Code 1981, § 8-2-184, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.)

**The 2005 amendment**, effective July 1, 2005, deleted “of motor vehicle safety” following “commissioner” in three places in this Code section.

**The 2006 amendment**, effective July 1, 2006, deleted “or mobile home” follow-

ing “The manufactured home” near the beginning of paragraph (a)(1); added “, if applicable” to the end of paragraph (b)(3); and substituted “Certificate of Permanent Location” for “certificate of permanent location” near the end of paragraph (b)(4).

### 8-2-185. Responsibilities of commissioner following receipt of Certificate of Removal from Permanent Location.

(a) Upon receipt of a properly executed Certificate of Removal from Permanent Location, the commissioner shall file and retain a copy of such certificate together with all other prior title records related to the home and may thereafter issue a new certificate of title for the home. The commissioner shall charge and collect the fee otherwise prescribed by law for the issuance of a certificate of title.

(b) When a Certificate of Removal from Permanent Location is so filed, the commissioner shall return to the filing party the original of the Certificate of Removal from Permanent Location containing thereon confirmation by the commissioner that the Certificate of Removal from Permanent Location has been so filed. (Code 1981, § 8-2-185, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.)

**The 2005 amendment**, effective July 1, 2005, deleted “of motor vehicle safety” following “commissioner” throughout this Code section.

**The 2006 amendment**, effective July 1, 2006, substituted “Certificate of Removal from Permanent Location” for “certificate” twice in subsection (b).

### 8-2-186. Responsibilities of clerk of superior court upon receipt of Certificate of Removal from Permanent Location.

(a) The clerk of superior court shall not accept a Certificate of Removal from Permanent Location for filing unless the Certificate of

Removal from Permanent Location contains thereon the confirmation by the commissioner that the Certificate of Removal from Permanent Location has been filed with the commissioner.

(b) When a Certificate of Removal from Permanent Location is properly filed with the clerk of superior court, the clerk shall record such certificate in the same manner as other instruments affecting the real property described in the Certificate of Removal from Permanent Location and shall charge and collect the fees usually charged for recording deeds and other instruments relating to real estate. Such certificate shall be indexed under the name of the current owner of the real property in both the grantor and grantee indexes. (Code 1981, § 8-2-186, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.)

**The 2005 amendment**, effective July 1, 2005, deleted “of motor vehicle safety” following “commissioner” in two places in subsection (a).

1, 2006, substituted “Certificate of Removal from Permanent Location” for “certificate” twice in subsection (a) and once in subsection (b).

**The 2006 amendment**, effective July

### Subpart 3

#### Destruction of Manufactured Homes

#### **8-2-187. Certificate of Destruction and requirements for issuance.**

(a) When a home which has previously become real property has been or is to be destroyed, the owner of the real property and the holders of all security interests therein shall execute and file a Certificate of Destruction:

(1) With the commissioner; and

(2) In the real estate records of the county where the real property is located.

(b) The Certificate of Destruction shall be in a form prescribed by the commissioner and shall include:

(1) The name and address of the owner;

(2) The names and addresses of the holders of any security interest and of any lien;

(3) The title number formerly assigned to the home, if applicable;

(4) A description of the real estate on which the home was previously located, including the name of the owner and a reference by deed book and page number to the recording of the former Certificate of Permanent Location;

(5) Verification of the destruction by a law enforcement officer; and

(6) Any other data the commissioner prescribes. (Code 1981, § 8-2-187, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.)

**The 2005 amendment**, effective July 1, 2005, deleted “of motor vehicle safety” following “commissioner” in three places in this Code section.

**The 2006 amendment**, effective July

1, 2006, added “, if applicable” to the end of paragraph (b)(3); and substituted “Certificate of Permanent Location” for “certificate of permanent location” at the end of paragraph (b)(4).

## 8-2-188. Retention of titles by commissioner.

(a) Upon receipt of a properly executed Certificate of Destruction, the commissioner shall file and retain a copy of such certificate together with all other prior title records related to the home.

(b) When a Certificate of Destruction is so filed, the commissioner shall issue to the filing party the original of the Certificate of Destruction containing thereon confirmation by the commissioner that the Certificate of Destruction has been so filed. (Code 1981, § 8-2-188, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.)

**The 2005 amendment**, effective July 1, 2005, deleted “of motor vehicle safety” following “commissioner” throughout this Code section.

**The 2006 amendment**, effective July 1, 2006, substituted “Certificate of Destruction” for “certificate” twice in subsection (b).

## 8-2-189. Requirements for filing with clerk of superior court.

(a) The clerk of superior court shall not accept a Certificate of Destruction for filing unless the Certificate of Destruction contains thereon the confirmation by the commissioner that the Certificate of Destruction has been filed with the commissioner.

(b) When a Certificate of Destruction is properly filed with the clerk of superior court, the clerk shall record such certificate in the same manner as other instruments affecting the real property described in the Certificate of Destruction and shall charge and collect the fees usually charged for recording deeds and other instruments relating to real estate. Such certificate shall be indexed under the name of the current owner of the real property in both the grantor and grantee indexes. (Code 1981, § 8-2-189, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2004, p. 631, § 8; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.)

**The 2005 amendment**, effective July 1, 2005, deleted “of motor vehicle safety”

following “commissioner” in two places in subsection (a).



**The 2006 amendment**, effective July 1, 2006, substituted “Certificate of Destruction” for “certificate” twice in subsection (a) and once near the middle of subsection (b).

Subpart 4

Fees

8-2-190. Taxation as real property.

A manufactured home which constitutes real property shall not be subject to Article 10 of Chapter 5 of Title 48 but shall instead be taxed as real property and a part of the underlying real estate. (Code 1981, § 8-2-190, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.)

**The 2006 amendment**, effective July 1, 2006, substituted “A manufactured home” for “A manufactured or mobile home” at the beginning of this Code section.

**Editor’s notes.** — Ga. L. 2005, p. 334, § 3-1, effective July 1, 2005, reenacted this Code section without change.

8-2-191. Filing fee.

The commissioner shall charge a fee of \$18.00 for any filing under this part. (Code 1981, § 8-2-191, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.)

**The 2005 amendment**, effective July 1, 2005, deleted “of motor vehicle safety” following “commissioner” in this Code section.

**Editor’s notes.** — Ga. L. 2006, p. 702, effective July 1, 2006, reenacted this Code section without change.

ARTICLE 3

APPLICATION OF BUILDING AND FIRE RELATED CODES TO EXISTING BUILDINGS

8-2-222. Immunity of state and local entities; liability of property owner or user.

JUDICIAL DECISIONS

**No application to city inspector performing a power reconnect inspection.** — Neither O.C.G.A. § 8-2-222 nor O.C.G.A. § 25-2-38.1 operated to relieve a city inspector from liability for failure to properly inspect a mobile home prior to authorizing the connection of electrical power to the home because there was no evidence that the inspector conducted an inspection of the mobile home pursuant to the Uniform Act for the Application of Building and Fire Related Codes to Existing Buildings or the Minimum Fire Safety Standards Code. *Vann v.*

Finley, 313 Ga. App. 153, 721 S.E.2d 156 (2011).

CHAPTER 3  
HOUSING GENERALLY

Article 1  
Housing Authorities

Sec. and validation of bonds; venue of actions.

PART 1

PART 5

GENERAL PROVISIONS

REGIONAL HOUSING AUTHORITIES

- Sec.  
8-3-3. Definitions.  
8-3-6. Resolution as conclusive evidence of authority's establishment and authority.  
8-3-14. Consolidated housing authorities for two or more municipalities.

- 8-3-104. Resolution as conclusive evidence of an authority's establishment; sufficiency of resolution.

Article 4  
Fair Housing

PART 2

- 8-3-202. Unlawful practices in selling or renting dwellings; exceptions.  
8-3-206. Powers and duties of administrator; housing and urban development programs of other agencies.

POWERS OF HOUSING AUTHORITIES GENERALLY

- 8-3-30. General powers; applicability of laws as to acquisition, operation, or disposition of property by other public bodies.  
8-3-31.1. "Public use" defined; eminent domain to be exercised solely for public use.  
8-3-35. Legislative findings; additional powers of authority; effect of financing with bond proceeds; issuance, sale, confirmation,

Article 5

Housing Trust Fund for the Homeless

- 8-3-303. Amounts credited to trust fund.  
8-3-304. Investments.  
8-3-305. Payments from fund.  
8-3-309. Acceptance of federal funds; disposition.

ARTICLE 1  
HOUSING AUTHORITIES

PART 1

GENERAL PROVISIONS

8-3-1. Short title.

## JUDICIAL DECISIONS

**Evidence in prosecution for possession of controlled substance with intent to distribute within 1,000 feet of public housing project.** — Evidence was sufficient to sustain a defendant's conviction for possession of a controlled substance with intent to distribute within 1,000 feet of a public housing project as evidence that the public housing complex where drugs were found in the apartment

of the defendant's girlfriend was under the jurisdiction of a housing authority, pursuant to O.C.G.A. §§ 8-3-1 and 8-3-2, was twice presented at trial, the evidence showed that the location consisted of dwelling units, and that these dwelling units were occupied by low and moderate income families. *Robinson v. State*, 314 Ga. App. 545, 724 S.E.2d 846 (2012).

## RESEARCH REFERENCES

**Am. Jur. Pleading and Practice Forms.** — 13B Am. Jur. Pleading and Practice Forms, Housing Laws and Urban Redevelopment, § 2.

## 8-3-2. Legislative findings and declaration of necessity.

## JUDICIAL DECISIONS

**Evidence in prosecution for possession of controlled substance with intent to distribute within 1,000 feet of public housing project.** — Evidence was sufficient to sustain a defendant's conviction for possession of a controlled substance with intent to distribute within 1,000 feet of a public housing project as evidence that the public housing complex where drugs were found in the apartment

of the defendant's girlfriend was under the jurisdiction of a housing authority, pursuant to O.C.G.A. §§ 8-3-1 and 8-3-2, was twice presented at trial, the evidence showed that the location consisted of dwelling units, and that these dwelling units were occupied by low and moderate income families. *Robinson v. State*, 314 Ga. App. 545, 724 S.E.2d 846 (2012).

## 8-3-3. Definitions.

As used in this article, the term:

(1) "Area of operation," in the case of a housing authority of a city, means such city and the area within ten miles of the territorial boundaries thereof but does not mean any area which lies within the territorial boundaries of any other city unless a resolution shall have been adopted by the governing body of such other city declaring that there is a need for the city housing authority to exercise its powers within the territorial boundaries of said other city. No city, county, regional, or consolidated authority shall operate in any area in which an authority already established is operating without the consent by resolution of the authority already operating therein.

(2) "Authority" or "housing authority" means any of the public corporations created by or pursuant to this article or any amendments thereto.



(3) "Bonds" means any bonds, notes, interim certificates, debentures, or other obligations issued by an authority pursuant to this article.

(4) "City" means any city in the state. "The city" means the particular city for which a particular housing authority is created.

(5) "Clerk" means the clerk of the city or the clerk of the county, as the case may be, or the officer charged with the duties customarily imposed on such clerk.

(6) "County" means any county in the state. "The county" means the particular county for which a particular housing authority is created.

(7) "Dormitory housing project" means the construction, acquisition, remodeling, or improving of, or the adding to, any facility for use in connection with the housing of students at any member institution of the University System of Georgia.

(8) "Federal government" means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(9) "Governing body" means, in the case of a city, the council, commission, board of aldermen, or other legislative body of the city, and, in the case of a county, the judge of the probate court, the county commissioners, or other legislative body of the county.

(10) "Housing project" means:

(A) Any work or undertaking:

(i) To demolish, clear, or remove buildings from any slum area, including the adaptation of such area to public purposes such as parks or other recreational or community purposes;

(ii) To provide decent, safe, and sanitary urban or rural dwellings, apartments, or other living accommodations for persons of low income, including the providing of buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, or gardening or for administrative, community, health, recreational, educational, welfare, or other purposes; provided, however, that a project which is or is expected to be subject to a private enterprise agreement shall qualify as a "housing project" within the meaning of this article if at least 20 percent of the project is occupied by persons of low income; or

(iii) To accomplish a combination of the foregoing; and

(B) The planning of the buildings and improvements; the acquisition of property; the demolition of existing structures; the construction, reconstruction, alteration, and repair of the improvements; and all other work in connection therewith.

(11) “Mayor” means the mayor of the city or the officer thereof charged with the duties customarily imposed on the mayor.

(12) “Obligee of the authority” or “obligee” means any bondholder, or the trustee or trustees for any bondholders; any lessor demising to the authority property used in connection with a housing project, or any assignee or assignees of such lessor’s interest or any part thereof; and the federal government when it is a party to any contract with the authority.

(13) “Persons of low income” means persons or families who lack the income necessary (as determined by the authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings without overcrowding.

(13.1) “Private enterprise agreement” means a contract between a housing authority and a person or entity operating for profit for:

(A) The management of a housing project;

(B) The development of and the provision of credit enhancement with respect to a housing project;

(C) The ownership or operation of a housing project by the for profit entity in which the housing authority participates, either directly or indirectly through a wholly owned subsidiary, for purposes of facilitating the development, provision of credit enhancement, operation, or management of such housing project in accordance with this article. Such participation may involve ownership by the housing authority of an interest in the housing project through the for profit entity, ownership by the housing authority of the land on which the housing project is developed, or provision by the housing authority of a combination of funds to the for profit entity for a portion of the construction costs of the housing project and funds to the for profit entity to subsidize the operating costs of units for persons of low income to the extent such contract is designated as a private enterprise agreement by the housing authority; or

(D) Any combination of any of the foregoing.

(14) “Real property” means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith, and every estate, interest, and right, legal or equitable, therein, including terms for years and liens by way

of judgment, mortgage, or otherwise, and the indebtedness secured by such liens.

(15) “Slum” means any area comprised predominantly of dwellings which are detrimental to safety, health, and morals by reason of dilapidation; overcrowding; faulty arrangement or design; lack of ventilation, light, or sanitary facilities; or any combination of these factors. (Ga. L. 1937, p. 210, § 3; Ga. L. 1939, p. 112, § 1; Ga. L. 1943, p. 146, §§ 1-4; Ga. L. 1951, p. 219, § 1; Ga. L. 1959, p. 65, § 2; Ga. L. 1987, p. 283, §§ 1, 2; Ga. L. 1996, p. 1417, § 2; Ga. L. 2007, p. 203, § 1/HB 30.)

**The 2007 amendment**, effective July 1, 2007, in subparagraph (13.1)(C), in the first sentence, inserted “or operation” and substituted “by” for “through” near the

beginning, substituted a period for a semicolon at the end of the first sentence, and added the second sentence.

### JUDICIAL DECISIONS

**“Public property” status upheld in suit with private contractor.** — Because a county housing authority owned the property, regardless of the county’s future plans to sell the property to private

parties, it remained public property; thus, a private contractor was not authorized to place a lien on the property. *Vakilzadeh Enters. v. Hous. Auth. of DeKalb, Ga.*, 271 Ga. App. 130, 608 S.E.2d 724 (2004).

### 8-3-6. Resolution as conclusive evidence of authority’s establishment and authority.

In any action or proceeding involving the validity or enforcement of, or otherwise relating to, any contract of an authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers under this article upon proof of the adoption of a resolution by the governing body declaring the need for the authority. Such resolution shall be deemed sufficient if it declares that there is need for an authority and finds in substantially such terms as appear in subsection (a) of Code Section 8-3-5, no further detail being necessary, that either or both of the conditions enumerated in that subsection exist in the city or county, as the case may be. (Ga. L. 1937, p. 210, § 4; Ga. L. 1939, p. 126, § 1; Ga. L. 1951, p. 127, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1; Ga. L. 2011, p. 99, § 7/HB 24.)

**The 2011 amendment**, effective January 1, 2013, deleted the former last sentence which read: “A copy of such resolution duly certified by the clerk shall be admissible in evidence in any action or proceeding.” See editor’s note for applicability.

**Cross references.** — Hearsay rule ex-

ceptions, § 24-8-803. Self authentication, § 24-9-902. Public records, § 24-10-1005.

**Editor’s notes.** — Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that the amendment made by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.



**Law reviews.** — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

#### **8-3-14. Consolidated housing authorities for two or more municipalities.**

(a) As used in this Code section, the term “municipality” means any municipality in this state.

(b) If the governing body of each of two or more municipalities by resolution declares that there is a need for one housing authority for all of such municipalities to exercise in such municipalities the powers and other functions prescribed for a housing authority, a public body corporate and politic to be known as a consolidated housing authority, which may be an existing housing authority designated by the municipalities as the consolidated housing authority or a new housing authority, with such corporate name as it selects, shall thereupon exist for all of such municipalities and exercise its powers and other functions within its area of operation as defined in this article, including the power to undertake projects therein. Upon the creation of a consolidated housing authority, any housing authority created for any of such municipalities, other than an existing housing authority designated as the consolidated housing authority, shall cease to exist except for the purpose of winding up its affairs and executing a deed of its real property to the consolidated housing authority.

(c) The creation of a consolidated housing authority and the finding of need therefor shall be subject to the same provisions and limitations as are applicable to the creation of a regional housing authority; and all of the provisions of this article applicable to regional housing authorities and the commissioners thereof shall be applicable to consolidated housing authorities and the commissioners thereof; provided, however, that Code Section 8-3-107 shall not be applicable to the consolidation of housing authorities into a designated existing housing authority; and provided, further, that the area of operation of a consolidated housing authority shall include all of the territory within the boundaries of each municipality joining in the creation of such authority together with the territory within ten miles of the boundaries of each such municipality; and provided, further, that for all such purposes, the term “county” shall be construed as meaning “municipality,” the term “governing body” in Code Section 8-3-106 shall be construed as meaning “mayor or other executive head of the municipality,” and the terms “county housing authority” and “regional housing authority” shall be construed as meaning “housing authority of the city” and “consolidated housing authority,” respectively.

(d) The governing body of a municipality for which a housing authority has not been created may adopt the resolution provided for in

subsection (b) of this Code section if it first declares that there is a need for a housing authority to function in said municipality, which declaration shall be made in the same manner and subject to the same conditions as the declaration of the governing body of a city required by Code Sections 8-3-4 through 8-3-6 for the purpose of authorizing a housing authority created for a city to transact business and exercise its powers.

(e) Except as otherwise provided in this Code section, a consolidated housing authority and the commissioners thereof shall, within the area of operation of such consolidated housing authority, have the same functions, rights, powers, duties, privileges, immunities, and limitations as those provided for housing authorities created for cities, counties, or groups of counties and the commissioners of such housing authorities, in the same manner as though all the provisions of law applicable to housing authorities created for cities, counties, or groups of counties were applicable to consolidated housing authorities. (Ga. L. 1943, p. 146, § 6; Ga. L. 2007, p. 203, § 2/HB 30.)

**The 2007 amendment**, effective July 1, 2007, substituted “this” for “the” at the end of subsection (a); in subsection (b), inserted “which may be an existing housing authority designated by the municipalities as the consolidated housing authority or a new housing authority,” near the middle of the first sentence, and inserted “, other than an existing housing

authority designated as the consolidated housing authority,” near the middle of the second sentence; and inserted “Code Section 8-3-107 shall not be applicable to the consolidation of housing authorities into a designated existing housing authority; and provided, further, that” in the middle of subsection (c).

## PART 2

### POWERS OF HOUSING AUTHORITIES GENERALLY

#### **8-3-30. General powers; applicability of laws as to acquisition, operation, or disposition of property by other public bodies.**

(a) An authority shall constitute a public body corporate and politic exercising public and essential governmental functions and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others granted by this article:

(1) To sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal bylaws, rules, and regulations, not inconsistent with this article, to carry into effect the powers and purposes of the authority;

(2) Within its area of operation, to prepare, carry out, acquire, lease, and operate housing projects; to provide for the construction, reconstruction, improvement, alteration, or repair of any housing project or any part thereof;

(3) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants thereof; and, notwithstanding anything to the contrary contained in this article or in any other provision of law, to include in any contract let in connection with a project stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor and comply with any conditions which the federal government may have attached to its financial aid of the project;

(4) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project and, subject to the limitations contained in this article, to establish and revise the rents or charges therefor; to own, hold, and improve real or personal property; to purchase, lease, obtain options upon, or acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge, or dispose of any real or personal property or any interest therein; to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards; to procure insurance or guarantees from the federal government of the payment of any debts or parts thereof, whether or not incurred by said authority, secured by mortgages on any property included in any of its housing projects;

(5) Subject to any agreement with bondholders, to invest moneys of the authority not required for immediate use to carry out the purposes of this part, including the proceeds from the sale of any bonds and any moneys held in reserve funds, in obligations which shall be limited to the following:

(A) Bonds or other obligations of the state or other states or of other counties, municipal corporations, and political subdivisions of this state or bonds or other obligations the principal and interest of which are guaranteed by the state;

(B) Bonds or other obligations of the United States or of subsidiary corporations of the United States government fully guaranteed by such government;

(C) Obligations of and obligations guaranteed by agencies or instrumentalities of the United States government, including those



issued by the Federal Land Bank, Federal Home Loan Bank, Federal Intermediate Credit Bank, Bank for Cooperatives, and any other such agency or instrumentality now or hereafter in existence; provided, however, that all such obligations shall have a current credit rating from a nationally recognized rating service of at least one of the three highest rating categories available and have a nationally recognized market;

(D) Bonds or other obligations issued by any public housing agency or municipality in the United States, which bonds or obligations are fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States government, or project notes issued by any public housing agency, urban renewal agency, or municipality in the United States and fully secured as to payment of both principal and interest by a requisition, loan, or payment agreement with the United States government;

(E) Certificates of deposit of national or state banks located within the state which have deposits insured by the Federal Deposit Insurance Corporation or the Georgia Deposit Insurance Corporation, including the certificates of deposit of any bank, savings and loan association, or building and loan association acting as depository, custodian, or trustee for any such bond proceeds; provided, however, that the portion of such certificates of deposit in excess of the amount insured by the Federal Deposit Insurance Corporation or the Georgia Deposit Insurance Corporation, if any such excess exists, shall be secured by deposit with the Federal Reserve Bank of Atlanta, Georgia, the Federal Home Loan Bank of Atlanta, Georgia, any national or state bank located within the state, or with a trust office within this state, or one or more of the following securities in an aggregate principal amount equal at least to the amount of such excess:

(i) Direct and general obligations of the state or other states or of any county or municipality in the state;

(ii) Obligations of the United States or subsidiary corporations included in subparagraph (B) of this paragraph;

(iii) Obligations of agencies and instrumentalities of the United States government included in subparagraph (C) of this paragraph; or

(iv) Bonds, obligations, or project notes of public housing agencies, urban renewal agencies, or municipalities included in subparagraph (D) of this paragraph;

(F) Interest-bearing time deposits, repurchase agreements, reverse repurchase agreements, rate guarantee agreements, or other

similar banking arrangements with a bank or trust company having capital and surplus aggregating at least \$50 million or with any government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York having capital aggregating at least \$50 million or with any corporation which is subject to registration with the Board of Governors of the Federal Reserve System pursuant to the requirements of the Bank Holding Company Act of 1956, provided that each such interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangement shall permit the moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys;

(G) Any and all other obligations of investment grade quality having a credit rating from a nationally recognized rating service of at least one of the three highest rating categories available and having a nationally recognized market, including, but not limited to, collateralized mortgage obligations, owner trusts offering collateralized mortgage obligations, guaranteed investment contracts offered by any firm, agency, business, governmental unit, bank, insurance company, corporation chartered by the United States Congress, or other entity, real estate mortgage investment conduits, mortgage obligations, mortgage pools, and pass-through securities; and

(H) Securities of or other interests in any no-load, open-end management type investment company or investment trust registered under the Investment Company Act of 1940, as amended, or any common trust fund maintained by any bank or trust company which holds such proceeds as trustee or by an affiliate thereof so long as:

(i) The portfolio of such investment company or investment trust or common trust fund is limited to the obligations referenced in subparagraphs (B) and (C) of this paragraph and repurchase agreements are fully collateralized by any such obligations;

(ii) Such investment company or investment trust or common trust fund takes delivery of such collateral either directly or through an authorized custodian;

(iii) Such investment company or investment trust or common trust fund is managed so as to maintain its shares at a constant net asset value; and

(iv) Securities of or other interests in such investment company or investment trust or common trust fund are purchased

and redeemed only through the use of national or state banks located within this state having corporate trust powers;

(6) Within its area of operation, to investigate into living, dwelling, and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of decent, safe, and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning, and reconstructing slum areas, and the problem of providing dwelling accommodations for persons of low income and to cooperate with the city, the county, or the state or any political subdivision thereof in action taken in connection with such problem; and to engage in research, studies, and experimentation on the subject of housing;

(7) Acting through one or more commissioners or other person or persons designated by the authority, to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers, and issue commissions for the examination of witnesses who are outside of the state or unable to attend before the authority, or who are excused from attendance; to make available to appropriate agencies, including those charged with the duty of abating or requiring the correction of nuisances or like conditions or of demolishing unsafe or insanitary structures within its area of operation, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare;

(8) To exercise all or any part or combination of powers granted by this Code section;

(9) To invest moneys held in debt service reserve funds or sinking funds not required for immediate use or disbursement in obligations of the types specified in paragraph (5) of this subsection, provided that, for the purpose of this paragraph, the amounts and maturities of such obligations shall be based upon and correlated to the debt service (principal installments and interest payments) schedule for which moneys are to be supplied;

(10) To incorporate one or more nonprofit corporations as subsidiary corporations of the authority for the purpose of carrying out any of the powers of the authority and accomplishing any of the purposes of the authority. Any such subsidiary corporation shall be a nonprofit corporation and a public body corporate and politic exercising public and essential governmental functions. Any subsidiary corporations



created pursuant to this power shall be created pursuant to Chapter 3 of Title 14, the “Georgia Nonprofit Corporation Code,” and the Secretary of State shall be authorized to accept such filings. Some or all of the members of the board of directors of the authority shall constitute the members of and shall serve as directors of any subsidiary corporation and such service shall not constitute a conflict of interest. Upon dissolution of any subsidiary corporation of the authority, any assets shall revert to the authority or to any successor to the authority or, failing such succession, to the city or the county, as applicable. The authority shall not be liable for the debts or obligations or bonds of any subsidiary corporation or for the actions or omissions to act of any subsidiary corporation unless the authority expressly so consents; and

(11) To incorporate one or more corporations as subsidiary corporations of the authority for the purpose of carrying out any of the powers of the authority and accomplishing any of the purposes of the authority. Any subsidiary corporations created pursuant to this paragraph shall be created pursuant to Chapter 2 of Title 14, the “Georgia Business Corporation Code,” and the Secretary of State shall be authorized to accept such filings. Some or all of the members of the board of commissioners of the authority may serve as directors of any subsidiary corporation and such service shall not constitute a conflict of interest; provided, however, that no member of the board of commissioners of the authority shall be eligible to serve as a director of any subsidiary corporation if that member has any financial interest in the subsidiary corporation. Upon dissolution of any subsidiary corporation of the authority, any assets shall be distributed to the authority as the sole shareholder or to any successor to the authority or, failing such succession, to the city or county, as applicable. The authority shall not be liable for the debts, obligations, or bonds of any subsidiary corporation or for the actions or omissions to act of any subsidiary corporation unless the authority expressly so consents.

(b) No provisions of law with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

(c) No loan made by an authority to an entity with which the authority has entered into a private enterprise agreement shall be deemed usurious or otherwise in violation of Code Section 7-4-17 so long as such loan complies with Code Section 7-4-18. (Ga. L. 1937, p. 210, § 8; Ga. L. 1939, p. 126, § 2; Ga. L. 1951, p. 127, § 2; Ga. L. 1959, p. 141, § 2; Ga. L. 1962, p. 734, § 2; Ga. L. 1987, p. 283, § 3; Ga. L. 1993, p. 1067, §§ 1, 2; Ga. L. 1996, p. 1417, § 6; Ga. L. 1998, p. 857, § 1; Ga. L. 2000, p. 1428, §§ 1, 2; Ga. L. 2001, p. 4, § 8; Ga. L. 2010, p. 404, § 1/SB 369.)

**The 2010 amendment**, effective July 1, 2010, in subparagraph (a)(5)(A), inserted “or other states or of other counties, municipal corporations, and political subdivisions of this state”; in subparagraph (a)(5)(C), inserted “and obligations guaranteed by”, inserted “or instrumentalities”, inserted “, including those”, deleted “the” preceding “Federal Home”, deleted “and” preceding “Bank for”, inserted “, and any other such agency or instrumentality now or hereafter in existence”, and

added the proviso at the end; in subparagraph (a)(5)(E), in the introductory paragraph, deleted “or with” preceding “any national” and inserted “, or with a trust office within this state” near the end, inserted “or other states” in subdivision (a)(5)(E)(i), and inserted “and instrumentalities” in subdivision (a)(5)(E)(iii); deleted “and” at the end of subparagraph (a)(5)(F); added “and” at the end of subparagraph (a)(5)(G); and added subparagraph (a)(5)(H).

### **8-3-31.1. “Public use” defined; eminent domain to be exercised solely for public use.**

(a) As used in this Code section, the term “public use” shall have the meaning specified in Code Section 22-1-1.

(b) Any exercise of the power of eminent domain under this chapter or Chapter 4 of this title must:

(1) Be for a public use; and

(2) Be approved by resolution of the governing body of the municipality or county in conformity with the procedures specified in Code Section 22-1-10. (Code 1981, § 8-3-31.1, enacted by Ga. L. 2006, p. 39, § 2/HB 1313.)

**Cross references.** — Eminent domain, generally, see § 21-1-1 et seq.

**Effective date.** — This Code section became effective April 4, 2006.

**Editor’s notes.** — Ga. L. 2006, p. 39, § 25, not codified by the General Assembly, provides that this Code section shall apply to those condemnation proceedings filed on or after February 9, 2006, where title has not vested in the condemning

authority unless constitutionally prohibited.

Ga. L. 2006, p. 39, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as ‘The Landowner’s Bill of Rights and Private Property Protection Act.’”

**Law reviews.** — For article on 2006 enactment of this Code section, see 23 Ga. St. U.L. Rev. 157 (2006).

### **8-3-35. Legislative findings; additional powers of authority; effect of financing with bond proceeds; issuance, sale, confirmation, and validation of bonds; venue of actions.**

(a) It is found and declared that from time to time there has existed and at the present time there exists an inadequate supply of funds at interest rates sufficiently low to enable the financing of safe and sanitary single and multifamily dwelling units for citizens of the state with low and moderate income; that the inability to finance such single and multifamily dwelling units results in an inability of builders to construct such housing, causing unemployment or underemployment in the housing construction and related businesses and causing a lack of

safe and sanitary housing to be available to persons of low and moderate income; that such unemployment or underemployment in the housing construction and related businesses and an inadequate supply of safe and sanitary housing for persons of low and moderate income wastes human resources, increases the public assistance burden of the state, impairs the security of family life, impedes the economic and physical development of the state, adversely affects the welfare and prosperity of all of the people of the state, and accordingly creates and fosters conditions adverse to the general health and welfare of the citizens of the state; and that the making available in the manner provided in this Code section of a more adequate supply of funds at interest rates sufficiently low to enable the financing of safe and sanitary single and multifamily dwelling units for citizens of low and moderate income will result in the alleviation or reduction of the adverse consequences which have resulted and may result from continued unemployment and underemployment in the housing construction and related businesses and the inadequate supply of such housing for persons of low and moderate income.

(b) In addition to the powers otherwise granted in this article, any authority shall have the following powers:

(1) To purchase mortgage loans or other forms of collateral and participations therein from mortgage lenders and other holders of such collateral and to make commitments therefor;

(2) To contract with mortgage lenders for the origination of, or the servicing of, mortgage loans to be made by such mortgage lenders to finance eligible housing units within the authority's area of operation and the servicing of the mortgages securing such mortgage loans;

(3) To make loans to mortgage lenders, provided that:

(A) The proceeds of such loans shall be required to be used by such mortgage lenders for the making of mortgage loans to finance eligible housing units within the authority's area of operation; and

(B) If required by the authority, the mortgages in connection with the mortgage loans so made, together with any additional security required by the authority, shall be mortgaged, pledged, assigned, or otherwise provided as security for such loans to mortgage lenders;

(4) To issue bonds from time to time, in its discretion, to provide funds to purchase mortgage loans or other forms of collateral or participation interests therein from mortgage lenders and to make loans to mortgage lenders and to make direct loans for eligible housing units as authorized in this Code section and to issue refunding bonds for the purpose of refunding or retiring bonds



previously issued by it for any such purpose, in accordance with the provisions of this article, which may include, but are not limited to, bonds on which the principal and the interest are payable:

(A) Exclusively from the income and revenues of the authority from one or more specified mortgage loans or other forms of collateral or participation interests therein from one or more specific loans to mortgage lenders, regardless of whether such mortgage loans or other forms of collateral or participation interests therein were purchased or such loans to mortgage lenders were made from the proceeds of such bonds; or

(B) From revenues of the authority generally that are not otherwise pledged or obligated;

(5) To exercise any and all rights accorded to the owner and holder of a mortgage under and in accordance with the terms of said instrument and the applicable laws of the state with respect to the mortgaged property, directly or through mortgage lenders or others acting on behalf of the authority or on behalf of the holders of its bonds, including, but without limitation, the power to foreclose, to forbear enforcement of any remedy on such terms as the authority shall deem appropriate, to sell the equity of redemption, to purchase the equity of redemption, and otherwise to sell and dispose of the mortgaged property, all as shall seem in the best interest of the authority and the holders of its bonds; and

(6) To mortgage, pledge, assign, or grant security interests in any or all of its mortgage loans or other collateral or participation interests therein, its mortgages, and any interest of the authority created thereby in the underlying real and personal properties covered by such mortgages as security for the payment of the principal of, and interest on, any bonds issued by the authority, or as security for any agreements made in connection therewith, whether then owned or thereafter acquired, and to pledge the revenues from which bonds are payable as security for the payment of the principal of and interest on said bonds and any agreements made in connection therewith.

(c) No eligible housing unit shall become subject to the provisions of Code Section 8-3-11 or Code Section 8-3-12 or entitled to the benefits of Code Section 8-3-8 solely by reason of having been financed, directly or indirectly, with proceeds of bonds issued by an authority for the purposes described in this Code section.

(d) Any bonds issued by an authority as permitted under the terms of this article which are issued for the purposes described in this Code section shall be issued in accordance with the provisions of this article, except that such bonds may be sold at any price which shall be approved

by the authority and may be sold at public or private sale without any public advertisement.

(e) Bonds of an authority which are issued for the purposes described in this Code section shall be confirmed and validated in accordance with the procedures set forth in Article 3 of Chapter 82 of Title 36 known as the “Revenue Bond Law,” and the judgment of validation shall have the same effect as is provided in said “Revenue Bond Law.”

(f) Any action pertaining to issuance of bonds of an authority issued for the purposes described in this Code section, the rights of the holders thereof or the security therefor, and any action pertaining to the validation of any such bonds, shall be brought in the superior court of the county in which the eligible housing units to be financed with proceeds of such bonds are located, or if such eligible housing units shall be located in more than one county, in either the superior court of the county in which the authority is located or in the superior court of any county where any of such eligible housing units are situated. (Ga. L. 1982, p. 2228, § 2; Code 1981, § 8-3-35, enacted by Ga. L. 1982, p. 2228, § 5; Ga. L. 1983, p. 3, § 6; Ga. L. 1989, p. 14, § 8; Ga. L. 2008, p. 239, § 1/SB 397.)

**The 2008 amendment**, effective May 6, 2008, inserted “either the superior court of the county in which the authority is located or in” near the end of subsection (f).

### PART 3

#### HOUSING AUTHORITY COMMISSIONERS

### 8-3-50. Appointment, qualifications, and tenure of commissioners; reimbursement for expenses.

**Law reviews.** — For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

#### JUDICIAL DECISIONS

**Mayor’s authority under § 8-3-50(a)(1).** — A mayor properly exercised the power of appointment granted under the plain language of O.C.G.A. § 8-3-50(a)(1), and the trial court properly held that the city council was not required to approve the mayor’s appointments to the housing authority’s board. Hous. Auth. v. Ellis, 288 Ga. App. 834, 655 S.E.2d 621 (2007).

## PART 5

## REGIONAL HOUSING AUTHORITIES

**8-3-104. Resolution as conclusive evidence of an authority's establishment; sufficiency of resolution.**

In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the regional housing authority, the regional housing authority shall be conclusively deemed to have become created as a public body corporate and politic and to have become established and authorized to transact business and exercise its powers under this part upon proof of the adoption of a resolution by the governing body of each of the counties creating the regional housing authority declaring the need for the regional housing authority. Each such resolution shall be deemed sufficient if it declares that there is need for the regional housing authority and finds in substantially such terms as appear in paragraphs (1) and (2) of subsection (a) of Code Section 8-3-102, no further detail being necessary, that the conditions enumerated in those paragraphs exist. (Ga. L. 1943, p. 146, § 6; Ga. L. 1951, p. 127, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1; Ga. L. 2011, p. 99, § 8/HB 24.)

**The 2011 amendment**, effective January 1, 2013, deleted the former last sentence which read: "A copy of such resolution of the governing body of a county duly certified by the clerk of such county shall be admissible in evidence in any suit, action, or proceeding." See editor's note for applicability.

**Cross references.** — Hearsay rule exceptions, § 24-8-803. Self authentication, § 24-9-902. Public records, § 24-10-1005.

**Editor's notes.** — Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that the amendment made by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

**Law reviews.** — For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

## ARTICLE 4

## FAIR HOUSING

## RESEARCH REFERENCES

**Am. Jur. Trials.** — Housing Discrimination Litigation, 28 Am. Jur. Trials 1.

**8-3-200. State policy; purposes and construction of article.**

## JUDICIAL DECISIONS

**Proof of violation.** — Although there was evidence that a homeowner who listed the homeowner's house with a real estate agency committed discrimination



when the homeowner refused to show the house to African-American homebuyers, the evidence did not support the homebuyers' claims that the agency and a broker who worked for the agency participated in that discrimination, and the appellate court reversed the trial court's judgment denying summary judgment in favor of the agency, the broker, and a real

estate company that sold a franchise to the agency on the homebuyers' claims alleging violation of Georgia's Fair Housing Act, O.C.G.A. § 8-3-200 et seq., and intentional infliction of emotional distress. *Coldwell Banker Real Estate Corp. v. DeGraft-Hanson*, 266 Ga. App. 23, 596 S.E.2d 408 (2004).

### **8-3-202. Unlawful practices in selling or renting dwellings; exceptions.**

(a) Except as exempted by subsection (b) or (d) of this Code section or Code Section 8-3-205, it shall be unlawful:

(1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, disability, familial status, or national origin;

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, disability, familial status, or national origin;

(3) To make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling, that indicates any preference, limitation, or discrimination based on race, color, religion, sex, disability, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination;

(4) To represent to any person because of race, color, religion, sex, disability, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available;

(5) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a disability;

(6) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

(A) That buyer or renter;

(B) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(C) Any person associated with that buyer or renter;

(7)(A) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:

(i) That person;

(ii) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(iii) Any person associated with that person.

(B) For purposes of this paragraph, discrimination includes:

(i) A refusal to permit, at the expense of the person with disabilities, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(ii) A refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(iii) In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct those dwellings in such a manner that:

(I) The public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities;

(II) All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons with disabilities in wheelchairs; and

(III) All premises within such dwellings contain the following features of adaptive design: (a) an accessible route into and through the dwelling; (b) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (c) reinforcements in bathroom walls to allow later installation of grab bars; and (d) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(C) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically disabled people (commonly cited as “ANSI A117.1”) suffices to satisfy the requirements of subdivision (B)(iii)(III) of this paragraph.

(D) In regard to persons with disabilities, discrimination includes, in connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct dwellings in such a manner that the dwellings have at least one building entrance on an accessible route, unless it is impracticable to do so because of the terrain or unusual characteristics of the site; or

(8) To require, as a condition of tenancy in public housing, any prohibition or restriction of any lawful possession of a firearm within an individual dwelling unless required by federal law or regulation.

(b)(1) Nothing in this Code section, other than paragraph (3) of subsection (a) of this Code section, shall apply to:

(A) Any single-family dwelling sold or rented by an owner, if:

(i) Such private individual owner does not own more than three such single-family dwellings at any one time;

(ii) Such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of more than three such single-family dwellings at any one time;

(iii) Such dwelling is sold or rented:

(I) Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person; and

(II) Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of subsection (c) of this Code section; but nothing in this paragraph shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title; or

(B) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families



living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(2) In the case of the sale of any such single-family dwelling by a private individual owner not residing in such dwelling at the time of such sale or who was not the most recent resident of such dwelling prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any 24 month period.

(c) For the purposes of subsection (b) of this Code section, a person shall be deemed to be in the business of selling or renting dwellings if:

(1) He has, within the preceding 12 months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

(2) He has, within the preceding 12 months, participated as agent, other than in the sale of his own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

(3) He is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(d) Nothing contained in this Code section shall require that a dwelling be made available for rental or lease to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. (Code 1981, § 8-3-202, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, § 4; Ga. L. 1995, p. 1302, §§ 13, 14, 16; Ga. L. 2014, p. 599, § 1-2/HB 60.)

**The 2014 amendment**, effective July 1, 2014, in subsection (a), deleted “or” at the end of subparagraph (a)(6)(C), substituted “; or” for a period at the end of subparagraph (a)(7)(D), and added paragraph (a)(8).

**Editor’s notes.** — Ga. L. 2014, p. 599, § 1/HB 60, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Safe Carry Protection Act.’”

## JUDICIAL DECISIONS

**Proof of violation.** — Although there was evidence that a homeowner who listed the homeowner’s house with a real estate agency committed discrimination when the homeowner refused to show the house to African-American homebuyers, the evidence did not support the homebuyers’ claims that the agency and a broker who worked for the agency partic-

ipated in that discrimination, and the appellate court reversed the trial court’s judgment denying summary judgment in favor of the agency, the broker, and a real estate company that sold a franchise to the agency on the homebuyers’ claims alleging violation of Georgia’s Fair Housing Act, O.C.G.A. § 8-3-200 et seq., and intentional infliction of emotional dis-

trepreneur. Coldwell Banker Real Estate Corp. v. DeGraft-Hanson, 266 Ga. App. 23, 596 S.E.2d 408 (2004).

Trial court erred in concluding as a matter of law that the adoption of leasing restriction amendments to a condominium association's bylaws did not constitute racially discriminatory housing practices in violation of the Georgia Fair Housing Act, O.C.G.A. § 8-3-200 et seq., because there was a genuine factual question as to whether the nondiscriminatory reason for adopting the amendments was pretextual; comments made by the president of the association's board of directors and a resident, combined with the timing of the amendments' adoption, established a prima facie case, the association and members of its board of directors articulated legitimate, nondiscriminatory reasons for the adoption of amendments, and a condominium owner provided evidence that the reasons were mere pretext. *Bailey v. Stonecrest Condo. Ass'n*, 304 Ga. App. 484, 696 S.E.2d 462 (2010).

**Condominium owner failed to show direct evidence of discriminatory intent** behind the adoption of amendments to the condominium association's bylaws prohibiting leasing because comments

made by the president of the association's board of directors and another resident did not amount to direct evidence that the amendments were passed with a discriminatory intent; the comments did not relate directly to the motives of the decision-maker, namely the two-thirds of the voting members of the association, in adopting the amendments, which motives based on the text of the amendments were facially race-neutral. *Bailey v. Stonecrest Condo. Ass'n*, 304 Ga. App. 484, 696 S.E.2d 462 (2010).

**No violation.** — Trial court properly granted summary judgment to a former landlord in an action by a tenant, alleging that the landlord's late husband repeatedly made sexual advances towards the tenant, in violation of O.C.G.A. § 8-3-202(a)(2) of the Georgia Fair Housing Act, and that the husband violated O.C.G.A. § 8-3-222 by these actions, as under principles of principal/agent liability, there was no evidence that the landlord authorized the husband to commit the sexual harassment, the landlord did not ratify the conduct, and it was outside the scope of the husband's employment as the property manager for the rental home. *Stewart v. Storch*, 274 Ga. App. 242, 617 S.E.2d 218 (2005).

## 8-3-204. Discrimination in residential real estate related transactions; appraisals.

### JUDICIAL DECISIONS

**Insurance coverage.** — Insurer was not required to defend its insureds in a race discrimination suit filed by potential property buyers who alleged that the insureds violated the Georgia Fair Housing Law, O.C.G.A. § 8-3-200 et seq., by refusing to sell them a lot in a subdivision because they were a bi-racial couple; the bodily injury provision of the commercial general liability policy did not provide coverage because the buyers did not allege that they were physically injured by the insureds' actions, and the policy's personal injury provision, which applied to personal injuries sustained when a right of occupancy was invaded, did not provide coverage because the buyers were not present occupants of the land at issue.

*Auto-Owners Ins. Co. v. Robinson*, No. 3:05-CV-109 (CDL), 2006 U.S. Dist. LEXIS 66551 (M.D. Ga. Sept. 6, 2006).

**Prima facie case.** — Affidavits of three (3) African-Americans, and plaintiff African-American homeowner's own testimony, that defendant mortgage loan servicer treated them unfairly by adding inappropriate fees, refusing requests for information, and improperly foreclosing, but that revealed nothing about the proportion of loans serviced for those of other races did not establish a prima facie case of discrimination based on race under 42 U.S.C. § 3605 and O.C.G.A. § 8-3-204. *Steed v. Everhome Mortg. Co.*, No. 11-13100, 2012 U.S. App. LEXIS 14150 (11th Cir. July 11, 2012) (Unpublished).

**8-3-206. Powers and duties of administrator; housing and urban development programs of other agencies.**

(a) The authority and responsibility for administering this article shall be vested in the administrator of the Commission on Equal Opportunity.

(b) The administrator may delegate any of the administrator's functions, duties, and powers to employees of the Commission on Equal Opportunity or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this article. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred.

(c) All departments and agencies of state government shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this article and shall cooperate with the administrator to further such purposes.

(d) The administrator shall:

(1) Make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the state;

(2) Publish in print or electronically and disseminate reports, recommendations, and information derived from such studies;

(3) Cooperate with and render technical assistance to local and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) Administer the programs and activities relating to housing in a manner affirmatively to further the policies of this article;

(5) Adopt, promulgate, amend, and rescind, subject to the approval of the Governor after giving proper notice and hearing to all interested parties pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," such rules and regulations as may be necessary to carry out the provisions of this article;

(6) Cooperate with the United States Department of Housing and Urban Development created by Section 10(b) of the Department of Housing and Urban Development Act of 1965 (79 Stat. 667) and with other federal and local agencies in order to achieve the purposes of Title VIII of the Civil Rights Act of 1968 (82 Stat. 81), as amended by



the Fair Housing Amendments Act of 1988 (102 Stat. 1619), and to cooperate with other federal and local agencies in order to achieve the purposes of this article;

(7) Accept gifts, bequests, grants, or other public or private payments on behalf of the state and pay such moneys into the state treasury;

(8) Accept on behalf of the state reimbursement pursuant to Section 810 of the Civil Rights Act of 1968 (82 Stat. 85), as amended by the Fair Housing Amendments Act of 1988 (102 Stat. 1625), for services rendered to assist the United States Department of Housing and Urban Development; and

(9) Maintain with the United States Department of Housing and Urban Development status as a “certified agency” under Section 810 of the Civil Rights Act of 1968 (82 Stat. 85), as amended by the Fair Housing Act of 1988 (102 Stat. 1625), and as provided by the rules and regulations of said department.

(e) In any case where the federal Department of Housing and Urban Development has initiated an investigation or any action or proceedings against any person relative to any acts or omissions by such person which may be in violation of this article, the administrator shall have no authority to initiate or pursue against such person any investigation, civil action, or administrative enforcement covered by the provisions of this article with regard to the same acts or omissions or facts or circumstances to which the federal investigation or proceedings are applicable. (Code 1981, § 8-3-206, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, § 6; Ga. L. 2010, p. 838, § 10/SB 388.)

**The 2010 amendment**, effective June 3, 2010, inserted “in print or electronically” in paragraph (d)(2).

### **8-3-213. State action for enforcement; fines; damages; civil action by local agency; administrative proceeding.**

#### **JUDICIAL DECISIONS**

**Summary judgment as to claims for punitive damages and attorney fees improper.** — Trial court erred in granting summary judgment in favor of a condominium association and the members of the association’s board of directors as to a condominium owner’s claims for punitive damages and attorney fees under the

Georgia Fair Housing Act, O.C.G.A. § 8-3-200 et seq., because genuine issues of material fact existed as to whether the association and members violated the Act and breached their fiduciary duties. *Bailey v. Stonecrest Condo. Ass’n*, 304 Ga. App. 484, 696 S.E.2d 462 (2010).

8-3-222. Coercion, intimidation, threats, or interference.

JUDICIAL DECISIONS

**No violation.** — Trial court properly granted summary judgment to a former landlord in an action by a tenant, alleging that the landlord's late husband repeatedly made sexual advances towards the tenant, in violation of O.C.G.A. § 8-3-202(a)(2) of the Georgia Fair Housing Act, and that the husband violated O.C.G.A. § 8-3-222 by these actions, as under principles of principal/agent liability, there was no evidence that the land-

lord authorized the husband to commit the sexual harassment, the landlord did not ratify the conduct, and it was outside the scope of the husband's employment as the property manager for the rental home. *Stewart v. Storch*, 274 Ga. App. 242, 617 S.E.2d 218 (2005).

**Cited** in *Bailey v. Stonecrest Condo. Ass'n*, 304 Ga. App. 484, 696 S.E.2d 462 (2010).

ARTICLE 5

HOUSING TRUST FUND FOR THE HOMELESS

8-3-303. Amounts credited to trust fund.

The state treasurer shall credit to the trust fund all amounts appropriated or otherwise donated to such trust fund. All funds appropriated to or otherwise paid or credited to the trust fund shall be presumptively concluded to have been committed to the purpose for which they have been appropriated or paid and shall not lapse. (Code 1981, § 8-3-303, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296.)

**The 2010 amendment**, effective July 1, 2010, substituted "state treasurer" for "director of the Office of Treasury and

Fiscal Services" near the beginning of the first sentence of this Code section.

8-3-304. Investments.

The state treasurer shall invest trust fund money in the same manner in which state funds are invested as authorized by the State Depository Board pursuant to Article 3 of Chapter 17 of Title 50. (Code 1981, § 8-3-304, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296.)

**The 2010 amendment**, effective July 1, 2010, substituted "state treasurer" for "director of the Office of Treasury and

Fiscal Services" near the beginning of this Code section.

8-3-305. Payments from fund.

The Office of the State Treasurer shall be authorized to draw a warrant or warrants upon the trust fund upon receipt of an order for

payment of the State Housing Trust Fund for the Homeless Commission, which order for payment has been approved by the Governor. (Code 1981, § 8-3-305, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

**The 2010 amendment**, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” near the beginning of this Code section.

**8-3-309. Acceptance of federal funds; disposition.**

The commission may accept federal funds granted by Congress or executive order for the purposes of residential housing projects and gifts, grants, and donations from individuals, private organizations, or foundations. All funds received in this manner shall be transmitted to the state treasurer for deposit in the trust fund to be disbursed as other moneys in the trust fund. (Code 1981, § 8-3-309, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296.)

**The 2010 amendment**, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” near the middle of the second sentence.

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**CHAPTER 4**

**CLEARANCE AND REHABILITATION OF BLIGHTED AREAS**

**RESEARCH REFERENCES**

**Am. Jur. Proof of Facts.** — Blighted Area, 1 POF2d 401.

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**CHAPTER 5**

**ART IN STATE BUILDINGS**

Sec.  
8-5-8.      Annual report.



### 8-5-7. Ownership rights; rights of artists.

**Law reviews.** — For note, “How to Get the Mona Lisa in your Home Without Breaking the Law: Painting a Picture of Copyright Issues with Digitally Accessible Museum Collections,” see 18 J. Intell. Prop. L. 567 (2011).

For comment, “Pay What You Like — No, Really: Why Copyright Law Should Make Digital Music Free for Noncommercial Uses,” see 58 Emory L.J. 1495 (2009).

### 8-5-8. Annual report.

In consultation with the director of the Office of Planning and Budget, the council shall prepare an annual report relative to the art in state buildings program pursuant to this chapter. The council shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the annual report in the manner which it deems to be most effective and efficient. Such report may be submitted as part of a report on the activities and programs of the council. (Code 1981, § 8-5-8, enacted by Ga. L. 1987, p. 891, § 1; Ga. L. 2005, p. 1036, § 1/SB 49.)

**The 2005 amendment**, effective July 1, 2005, deleted “and distribute to the General Assembly” following “shall pre-

pare” in the first sentence and added the second sentence.











